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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. ~~285.~~ 111

S. GRANVILLE BEALS, APPELLANT,

vs.

THE ILLINOIS, MISSOURI, AND TEXAS RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 2, 1886.

accession 2 & 911

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, MARCH 13, 1889.

a UNITED STATES OF AMERICA, *Eastern District of Missouri,* } ss:

In the Circuit Court of the United States in and for said District.

Be it remembered that on the second day of January, A. D. 1886, there was filed in said court a certain amended bill of complaint in words and figures following, to wit:

1 United States Circuit Court, Eastern District of Missouri. In Equity.

S. GRANVILLE BEALS, Plaintiff,
vs.
ILLINOIS, MISSOURI AND TEXAS RAILWAY Company, Cape Girardeau and State Line Railroad; George C. Thilenius and Henry T. Blow, Trustees, &c.; Thomas C. Fletcher, and Cape Girardeau and Southwestern Railway, Defendants. } Amended Bill of Complaint.

To the honorable the judges of the circuit court of the United States for the eastern district of Missouri:

S. Granville Beals, a citizen and resident of the State of New York, and doing business in the city of New York, brings this his
2 bill of complaint against The Illinois, Missouri and Texas Railway Company, The Cape Girardeau and State Line railroad, and The Cape Girardeau and Southwestern Railway Company, each being corporations severally organized and incorporated under the laws of the State of Missouri and now or recently doing business in that State, and George C. Thilenius and Henry T. Blow, trustees of said Cape Girardeau and State Line Railroad Company, and Thomas C. Fletcher, all citizens of said State of Missouri; and thereupon your orator complains and says:

I. That a corporation known and designated as the Pilot Knob, Cape Girardeau and Belmont Railroad Company was duly incorporated and organized by and under an act of the Legislature of the State of Missouri entitled "An act to incorporate the Pilot Knob, Cape Girardeau and Belmont Railroad Company," approved December 31, 1859, and an act amendatory thereto, entitled "An act to enable the Pilot Knob, Cape Girardeau and Belmont Railroad Company" to build an additional line of railroad, approved January 14, 1868, and another act amendatory thereof, entitled "An act to amend an act to incorporate the Pilot Knob, Cape Girardeau and Belmont Railroad Company," approved February 18, 1869, and whereby, among other provisions therein contained, the name of the said Pilot Knob, Cape Girardeau and Belmont Railroad Company was changed to the name Cape Girardeau and State Line railroad, which said last-named company is one of the defendants in this suit.

II. And your orator further shows unto your honors, on
3 information and belief, that prior to the month of January, 1871, and about that time the said defendant, the said Cape

Girardeau and State Line railroad, was vested with, in possession of, and was sole and exclusive owner of all the rights, privileges, property, and franchises granted, secured or intended to be granted and secured by the said several acts of the Legislature of the State of Missouri above referred to in respect to said Pilot Knob, Cape Girardeau and Belmont Railroad Company, and of all the rights, privileges, and property which had been acquired by said last-named company or by the said Cape Girardeau and State Line railroad, and had to some extent carried on the work of constructing the said railroad authorized to be built under said acts in the State of Missouri.

III. That in or about the month of January, 1871, the said defendant, the said Cape Girardeau and State Line railroad, entered into negotiations with Thomas C. Fletcher, of said State of Missouri, one of the defendants in this suit, to have him raise the necessary amount of money to construct and complete said railroad, or for him to have the same done by some company to be organized by him for that purpose.

IV. That on or about the 1st day of March, 1871, as your orator is informed and believes, a contract in writing was entered into between said defendant, the Cape Girardeau and State Line railroad, and said Fletcher, executed in due form of law, and which was duly executed and delivered, and bore date on or about the 1st day of March, 1871, which said contract was signed by the president of said company, and was attested by the secretary thereof, and was under the corporate seal of said last-named company, and said
4 contract was made and entered into in accordance with a resolution of the board of directors of said company, duly passed by them, and which contract was also duly signed and executed by said Fletcher, and provided, among other things, for a conveyance by said Cape Girardeau and State Line Railroad Company of all their said property, rights, and franchises to the defendants, George C. Thilenius and Henry T. Blow, as trustees, in trust; and which property, rights, and franchises were, by the terms of said contract, to be conveyed by said trustees to said Fletcher or to a company to be organized by him for the purpose of building and constructing said road and continuing the same in use and operation when built; and said contract further provided, as your orator is informed and believes, that said trustees, for and in behalf of the said Cape Girardeau and State Line Railroad Company, and also said company, and the company to be organized by the said Fletcher, or said Fletcher in person, should make a mortgage or deed of trust upon the entire property conveyed to said trustees in trust, as aforesaid, to secure first-mortgage bonds, and that the proceeds of the sale of said bonds should be used and employed in paying the expenses of building, completing, equipping, and operating said road by said Fletcher, or by the company which he was to organize for that purpose.

V. That, as your orator is informed and believes, the said Fletcher then proceeded to organize and have organized in due form of law, under the general statutes of the State of Missouri, an incorporated

company, under the name and style of the Illinois, Missouri and Texas Railway Company, which said company was duly organized, as your orator is informed and believes, under and pursuant
5 to the laws of the State of Missouri, in or about said month of March, 1871, as by the certificate of such organization and of the articles of association or a duly authenticated copy thereof, in court to be produced if required, will fully and at large appear, and that the said last-named company is one of the defendants in this suit and the same corporation which it was provided in said contract between said Cape Girardeau and State Line railroad and said Fletcher, as aforesaid, should be organized by him for the purpose of building, completing, and equipping said road for use.

VI. That afterward, in pursuance of said contract and of a resolution of said board of directors of the said Cape Girardeau and State Line Railroad Company, as your orator is informed and believes, to wit, on or about the 6th day of April, 1871, the said defendant, The Cape Girardeau and State Line Railroad Company, by an instrument in writing, executed in due form of law, under the seal of the said last-named company, signed by the president thereof and attested by its secretary, conveyed to the defendants, said George C. Thilenius and Henry T. Blow, as trustees, in trust, the road-bed and all other property of said Cape Girardeau and State Line railroad, being all the property, rights, and franchises of said company in and to said road as the same then existed or might thereafter exist or be constructed from the shore of the Mississippi river, in the city of Cape Girardeau, in the State of Missouri, to the boundary line between the States of Missouri and Arkansas, at a point east of Ripley county, Missouri, including all the equipments and appurtenances of said railroad, and the rights,
6 privileges, and franchises thereunto appertaining, and conveying all the right, title, and interest which the said corporation, the said Cape Girardeau and State Line railroad, then had or should thereafter acquire of, in, and to all and singular the lands acquired or to be acquired for said railroad, either by said Cape Girardeau and State Line Railroad Company or by said trustees for said company, whether in fee simple or less estate, from the United States of America, the State of Missouri, or from any county in said State, or otherwise; and in and by said deed of trust said last-named company directed said trustees and the president of said company, said defendant, George C. Thilenius, in the name of and in behalf of said Cape Girardeau and State Line Railroad, to join with the said defendant, the said Illinois, Missouri and Texas Railway Company, in the execution of a deed of trust or mortgage of all the aforesaid property to secure the payment of first-mortgage bonds of said last-named company and interest thereon, the proceeds of which bonds were to be used by said last-named company for the construction, completion, and equipment of said road.

VII. That said deed of trust was, as your orator is informed and believes, prior to the second day of May, 1871, duly executed by said Cape Girardeau and State Line Railroad Company and delivered to said trustees pursuant to and in accordance with a resolution of the

board of directors of said last-named company fully authorizing and empowering them and each of them to act in the premises in respect to all of said matters and things, and which said trust therein conferred was duly accepted and acted upon by said trustees and each of them.

7 VIII. That thereafter, to wit, on or about the 2d day of May, 1871, as your orator is informed and believes, a deed of trust or mortgage of all the aforesaid property of said defendant, The Cape Girardeau and State Line railroad, and of the said defendant, The Illinois, Missouri and Texas Railway Company, and of each of them, was made by said companies, respectively, pursuant to and in accordance with said contract and in pursuance with resolutions of the boards of said company of said companies, respectively, and by said Thilenius and Blow, as said trustees of said first-named company, for and on behalf of said company, to Frederick S. Winston and David Hoadley, of the city of New York, for the purpose of securing the bonds of the said defendant, The said Illinois, Missouri and Texas Railway Company, to the amount of one and one-half million of dollars and interest thereon, the proceeds of which bonds were to be used in the construction, completion, and equipment of said railroad for use, which said deed of trust or mortgage to said Winston and Hoadley was executed in due form of law and duly delivered, and was signed by said companies, respectively, and by said Thomas C. Fletcher, as president of said Illinois, Missouri and Texas Railway Company, and attested by S. Harry Wright, as secretary of said company, for and in behalf of said last-named company, and by George C. Thilenius, president of said Cape Girardeau and State Line railroad, and attested by H. G. Fongen, as secretary of said last-named Company, for and in behalf of said company, and by said George C. Thilenius and Henry T. Blow, as trustees as aforesaid of said property of said Cape Girardeau and State Line railroad, for and

8 in behalf of said last-named company, and by said Frederick S. Winston and David Hoadley, trustees named in said deed of trust or mortgage to them, and the corporate seal of said corporations, respectively, was duly affixed to said trust deed to said Winston and Hoadley, and the same was fully executed and delivered in due form of law to said Winston and Hoadley, and bore date on said 2d day of May, 1871.

IX. That, as your orator is informed and believes, said last-named trust deed or mortgage was duly delivered to said trustees, Winston and Hoadley, and the trust therein conferred was duly accepted and acted upon by them and each of them.

X. That the following is, as your orator is informed and believes, a true, full, and correct copy of said deed of trust or mortgage to said Winston and Hoadley—that is to say:

"This indenture, made on the 2d day of May, in the year of our Lord one thousand eight hundred and seventy-one, between the Illinois, Missouri and Texas Railway Company, a corporation created and existing under the general corporation laws of the State of Missouri, the Cape Girardeau and State Line Railway Company, a corporation created under the acts of the General Assembly of the

State of Missouri, approved December 31, 1859, and the act amendatory thereof, approved February 18, 1869, and George C. Thilenius and Henry T. Blow, trustees in a certain deed made and executed by the said Cape Girardeau and State Line Railroad Company to the said Illinois, Missouri and Texas Railroad Company, dated the 6th day of April, A. D. eighteen hundred and seventy-one, parties of the first part, and Frederick S. Winston and David Hoadley, both of the city of New York, parties of the second part.

"Whereas the said Illinois, Missouri and Texas Railway Company, pursuant to an authority of law and its agreement with the said Cape Girardeau and State Line Railroad Company, has resolved to issue and negotiate a series of fifteen hundred bonds of one thousand dollars each, numbered consecutively from one (1) to fifteen hundred (1500), inclusively, designated as first-mortgage railroad and land construction bonds of the Illinois, Missouri and Texas Railway Company, and amounting in the aggregate to one million five hundred thousand dollars, payable in twenty years from the 10th day of July, in the year of our Lord one thousand eight hundred and seventy-one, in gold coin of the United States, and bearing interest at the rate of seven per cent. per annum, payable semi-annually in such gold coin, which said bonds are all of like tenor, except as to numbers thereof, and in the following form: $1,000; United States of America, State of Missouri; No. —; Illinois, Missouri and Texas Railway Company, incorporated under the laws of Missouri; principal and interest payable in gold coin. Know all men by these presents that the Illinois, Missouri and Texas Railway Company is indebted to —— —— or bearer in the sum of one thousand dollars, in gold coin of the United States of America, which the Illinois, Missouri and Texas Railway Company hereby promises to pay to the said —— —— or the bearer hereof, in the gold coin aforesaid, on the 10th day of July, one thousand eight hundred and ninety-one, at the agency of said railway company, in the city of New York, with interest thereon at the rate of seven per centum per annum, payable semi-annually, in the gold coin aforesaid, at said agency, in the city of New York, on the 10th day of January and July, in each year, on the presentation and surrender of the annexed coupons, as they severally become due; and it is hereby expressly declared and agreed that in case default shall be made in the payment of any semi-annual instalment of interest on this bond when such interest shall become payable and be demanded and such interest shall remain unpaid and in arrear for the period of six months after the same shall have been demanded the principal of this bond may be declared and made due and payable in the manner and with the effect provided in the deed of trust or mortgage hereinafter mentioned. This bond is one of a series of fifteen hundred bonds (all of which of are of like tenor and date, except as to the numbers thereof) of one thousand dollars each, numbered consecutively from 1 to 1500, inclusively, and amounting in the aggregate to $1,500,000, and the payment of the principal and interest of each and all of said bonds is secured by a

deed of trust or mortgage bearing date the 2d day of May, A. D. 1871, duly executed and delivered by the said Illinois, Missouri and Texas Railway Company, and in which the Cape Girardeau and State Line Railroad Company, and George C. Thilenius and Henry T. Blow, trustees for said companies, have joined to F. S. Winston and David Hoadley, as trustees, and conveying to said trustees the road-bed and all other property of the said Illinois, Missouri and Texas Railway Company and of the Cape Girardeau and State Line Railroad Company, and all property of either or both said companies held by said trustees, being the railroad as the same now is or hereafter may be constructed
11 from the shore of the Mississippi river, in the city of Cape Girardeau, in the State of Missouri, to the boundary line between the States of Missouri and Arkansas at a point east of Ripley county, Missouri, together with the equipments and appurtenances of said railroad, and the rights, privileges, and franchises thereunto appertaining, and conveying also all the right, title, and interest which the said railroad companies, or either or both of them, or the said trustees for them or either of them now have or shall hereafter acquire of, in, and to all and singular the lands acquired or to be acquired for said railroad by either or both said companies, or by said trustees for them, whether in fee simple or a less estate from the United States of America, the State of Missouri, or from any county in said State or otherwise. This bond shall pass by delivery or by transfer upon the books of the said Illinois, Missouri, and Texas Railway Company at the office of the treasurer thereof, and after a registration of ownership certified hereon by the treasurer or transfer agent of said company no transfer except upon the books of the said railroad company shall be valid unless the last transfer shall have been to bearer and transferability by delivery thereof restored; but this bond shall continue susceptible of successive registrations and transfers to bearer as aforesaid at the option of the holder. This bond shall not become valid or obligatory until it shall have been authenticated by a certificate endorsed hereon and duly signed by said trustees or the successor or successors of said trustees in the trust deed created by the said deed, and until a further certificate shall be endorsed hereon and duly signed by the treasurer of said railroad company to the effect that this bond is registered in the books of the company.

12 In witness whereof the said Illinois, Missouri, and Texas Railway Company has caused its corporate seal to be hereto
[SEAL.] affixed and the same to be attested by the signature of its president and secretary, and has also caused the coupons hereto annexed to be signed by its treasurer this 10th day of ——, A. D. eighteen hundred and seventy-one.

—— ——, *President.*

—— ——, *Secretary.*

Now, therefore, this indenture witnesseth: That the said parties of the first part for, and in consideration of the premises and of the sum of one dollar, to them duly paid by the said parties of the

second part, the receipt whereof is hereby acknowledged, and in order the better to secure the payment of the principal of said bonds and all interest thereon as the same shall become payable, according to the tenor of said bonds and the terms of the coupons thereto annexed, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and transfer, unto the said parties of the second part, as joint tenants and not as tenants in common, and to the survivor of the said parties of the second part and to the heirs and assigns of such survivor, all and singular the railroad heretofore known as the Cape Girardeau and State Line railroad, and now designated as the Illinois, Missouri, and Texas railway, as the same now is or hereafter shall be constructed from the shore of the Mississippi river, within the corporate limits of the city of Cape Girardeau, in the State of Missouri, to the boundary line between the States of Missouri and Arkansas at a point east of Ripley county,
13 being a distance of eighty-five miles, more or less, together with the equipment and appurtenances of said railway, and the rights, privileges, and franchises thereunto appertaining, including the road-bed and the superstructure, and all the rights of way, and all the depot grounds and other lands, and all tracks, bridges, viaducts, culverts, fences, and other structures, and all station-houses, car-houses, sheds, and other buildings, and all machine shops or other shops now held or owned or which shall be hereafter held or acquired by the parties of the first part, their successors or assigns, for use in connection with said railroad or with any part thereof or with the business of the same, and also all equipment and all machinery, tools, implements, fuel, and material for constructing, opening, repairing, or replacing the said railroad or any part thereof or any of the eqipments or appurtenances *or appurtenances* of the said railroad or any part thereof, and also all franchises connected with or relating to the said railroad or the construction, maintenance, or use thereof, as fully and completely to all intents and purposes as if the said railroad were at the date hereof fully constructed, completed, and equipped; and also all the right, title, and interest which the Illinois, Missouri and Texas Railway Company and the Cape Girardeau and State Line Railroad Company now have or that either of them may hereafter, by reason of the construction of said railroad or any part thereof or otherwise, acquire, in law or equity, of, in, and to any and all lands, whether in fee simple or a less estate, in the counties of Cape Girardeau, Stoddard, Bollinger, Wayne, and Butler, in said State of Missouri or elsewhere soever; and also all the property, franchises, rights, and things whatsoever now held or which may be here-
14 after acquired by the said Illinois, Missouri and Texas Railway Company and the said Cape Girardeau and State Line Railroad Company, or the said trustees of the first part or their successors for either or both of said companies, or the successors of said companies or either of them, in connection with or relating to said railroad or any part thereof, or the construction, maintenance, or use of the same, together with all and singular the tenements, hereditaments, and appurtenances to said railroad, lands, and premises

and either of them belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, tolls, incomes, revenues, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the same and any and every part thereof, with the appurtenances; to have and to hold the said railroad, lands, and premises unto the said parties of the second part as joint tenants and not as tenants in common, and to the survivor of the said parties of the second part, his heirs and assigns, to the only proper use, benefit, and behoof of the said parties of the second part and of the survivor of them, his heirs and assigns; but in trust, nevertheless, to and for the uses and purposes hereinafter expressed—that is to say:

Article first. Until default shall be made by the said Illinois, Missouri and Texas Railway Company, its successors or assigns, in the payment of the principal or interest or some part thereof of the said bonds or some one of them the said Illinois, Missouri and
15 Texas Railway Company, its successors and assigns, shall be suffered and permitted to possess, manage, operate, and enjoy the said railway or railroad, with its equipment and appurtenances, and all and singular the lands, property, and franchises hereinbefore described, and to receive, take, and use the tolls, incomes, revenues, rents, issues, and profits thereof.

Article second. In case default shall be made in the payment of any semi-annual instalment of interest to accrue on any of said bonds, when such interest shall become payable and be demanded according to the tenor of such bond or the terms of any coupon thereto annexed, and such interest shall remain unpaid and in arrears for the period of six months after the same shall have been demanded, or in case of default being made in the payment of the principal of said bonds or any of them when the same shall become due and be demanded, then and in either and every such case it shall be lawful for the said parties of the second part, or for the survivors of the said parties of the second part, or for the successors or successor of the said parties of the second part, or of the survivor of them, in the trust hereby created, personally or by attorney-in-fact or agents, to enter into and upon all and singular the railroad aforesaid and the lands and premises aforesaid, and to take actual possession of the same, and from thenceforth to have, hold, and use the same, operating the said railroad and conducting the business thereof by such superintendents, managers, receivers, or agents as the said trustees or trustee so entering shall deem proper, and making from time to time such repairs and replacements and such useful alterations, additions, and improvements to the said
16 railroad and premises as the said trustees shall deem expedient; and it shall be lawful for the said trustee or trustees, after entry as aforesaid upon the said railroad and premises or any part thereof, to collect and receive all the tolls, fares, freights, rents, revenues, issues, and profits of said railroad and premises, and every part thereof, and to deduct therefrom the expenses of such entry and the expenses of holding, operating, and managing the said railroad

and conducting the business of the same, including the expenses of such repairs, replacements, alterations, additions, and improvements as may be made by them or him as aforesaid, and all payments which may be made or may be due for taxes and assessments; and after making the deduction aforesaid it shall be lawful for said trustee and trustees, and be their duty or his duty, to apply semi-annually on said first mortgage railroad and land-construction bonds in the order which such interest shall have become due, and to pay the same to the person holding the bonds and coupons evidencing the right to such interest, ratably and without discrimination or preference between them on account of the time of the actual issue of said bonds; and if, after payment of all interest on said bonds, a surplus of moneys shall remain, to pay over the same to the said Illinois, Missouri and Texas Railway Company, of the first part, its successors or assigns.

Article third. In case default shall be made in the payment of any interest to accrue on any of said bonds, and such interest shall remain unpaid and in arrears for the period of six months after the same shall have been demanded as aforesaid, or in case
17 default shall be made in the payment of the principal or any part thereof of the said bonds or any of them, it shall be lawful for the said parties of the second part, being trustees under these presents, or for the survivor of them, or the successor or successors of said trustees in trust hereby created, to enter into and upon all and singular the railroad aforesaid and the lands and premises aforesaid, and after such entry, or after other entry, or without entry, personally or by their attorneys or agents, to sell and dispose of said railroad, with its equipments and appurtenances, and all and singular the lands and other property, rights, and franchises hereinbefore conveyed or intended so to be, at public auction, at such place in the city of New York or in the city of Cape Girardeau, Missouri, as the said trustees or trustee or the survivor or successors or successor of them or either of them shall designate and at such time as they or he may or shall appoint: Provided, That the said trustees or trustee shall give notice of the time and place of such sale by advertisement published not less that twenty consecutive days in one or more daily newspapers in each of the cities of New York and St. Louis, and after such advertisement it shall be lawful for the said trustees or trustee to make such sale at the time and place mentioned in such advertisement or to adjourn such sale from time to time, and if so adjourning to make the same without further notice at the time to which the same may be adjourned and at the place mentioned in said advertisement of sale, and to make and deliver to the purchaser or purchasers of the said railroad, lands, and premises or any part thereof a good and sufficient deed or deeds in the law for the same in fee simple, which sale made as aforesaid shall be a perpetual bar, both in law and equity, against
18 the said parties of the first part, their successors and assigns, and all other persons claiming or to claim the said premises or any part or parcel thereof by, from, through, or under the said parties of the first part, their successors or assigns; and after de-

ducting from the proceeds of such sale just allowances for all expenses thereof, including attorneys' and counsel fees and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees or trustee in operating or maintaining the said railroad or in managing the business thereof while in their or his possession, or in arranging for and completing the sale aforesaid, and all payments which may have been by them or him for taxes or assessments, as well as reasonable compensation for their or his services, it shall be lawful for the said trustees or trustee and it shall be their duty or his duty to apply the proceeds of such sale to the payment of the principal of said bonds as may be at that time unpaid, whether or not such principal shall have by the terms of said bonds previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference as between them; and if after payment of said bonds and all interest thereon in full a surplus shall remain, to pay over such surplus to said parties of the first part, their successors or assigns, or as any court of competent jurisdiction shall order; and it is hereby understood and agreed that the receipt or receipts of the said trustees or trustee shall be a sufficient discharge to the purchaser or purchasers of the property and premises which shall be sold as aforesaid for his or their purchase-money, and that such purchaser or purchasers, his or their heirs,
19 executors, or administrators, shall not after payment thereof, and having such receipt, be liable to see to the application of such purchase-money upon or for the trust or purposes of these presents, or be in any manner whatsoever answerable for any loss, misapplication, or no application of such purchase-money or any part thereof, or be obliged to inquire into the necessity, expediency, or authority of or for such sale.

Article fourth. At any sale of the railroad and property aforesaid or of any part thereof, whether such sale be made by virtue of the power hereinbefore granted or by judicial authority, the trustees or trustee hereunder may bid for and purchase or cause to be bid for and purchased the property so sold or any part thereof in behalf of the holders of bonds secured by this instrument and then outstanding, in the proportion of the respective interests of such bondholders, at a reasonable price, if but a portion of said property shall be sold, and if the entire railroad property shall be sold, then at a price not exceeding the whole amount of said bonds then outstanding, with interest accrued thereon and the expenses of such sale.

Article fifth. In case default shall be made in the payment of any semi-annual instalment of interest on any of the said bonds when such interest shall become payable according to the tenor of such bond or of any coupon thereto annexed, the said coupon having been presented and payment of the interest therein specified having been demanded, and such instalment of interest shall remain unpaid and in arrear for the period of six months after the same shall
20 have been demanded, as aforesaid, the principal of each of the bonds secured hereby shall, at the option of the trustees hereunder, become and be immediately due and payable, but a ma-

jority in interest of the holders of all the said bonds then outstanding shall have the power, by an instrument in writing under their hands and seals, to instruct the trustees to declare the said principal to be due or to waive the right so to declare on such terms and conditions as such majority in interest shall prescribe, or to annul or reverse the declaration of any option by the trustees in the premises, provided, always, that no act or omission of the trustees of the bondholders shall extend to or affect any subsequent default or impair the rights resulting therefrom.

Article sixth. The trustees shall convey, by way of release or otherwise, to any party or parties who may be designated by said parties of the first part, their successors or assigns, or release from the lien and operation of these presents in such manner as such trustees may be advised, any and all lands granted or conveyed by this indenture or expressed or intended so to be, not being a part of said railroad nor required for the convenient use of and operation thereof, which shall or may be hereafter sold by the said parties of the first part or their successors or assigns in conformity with the provisions of this instrument, provided that such lands shall not be sold by the said parties of the first part or their successors or assigns at less than such sum as the trustees may approve as the value thereof, and no release or conveyance shall be executed by the said trustees unless the net proceeds of the sale of the land so sold shall be paid
21 over to them to be by them applied to the payment of interest on said bonds or to the purchase for cancellation of any such bonds.

Article seventh. The trustees under these presents shall be fully authorized to constitute and appoint an agent or attorney to execute conveyances, releases, and other instruments necessary and proper to be executed by them, to release from the lien and operation of these presents any of the said lands which shall be sold as hereinbefore authorized, and to act generally in behalf of said trustees in respect thereto, which agent may be removed by said trustees in their discretion and another appointed in his place, and all instruments executed and acts done by such agent within the scope of his authority in respect to said lands shall be legal and valid as if executed and done by the said trustees personally.

Article eight. If the parties of the first part, their successors or assigns, shall well and truly pay the principal of said bonds when the same shall become payable, and all interest thereon as such interest shall mature, according to the tenor of said bonds and the terms of the coupons thereto annexed, then and in that case all the estate, right, title, and interest of the said parties of the second part and the survivor of them and of their and his successors or successor in trust by these presents created shall cease, determine, and be void; otherwise the same shall be and remain in full force and virtue.

Article ninth. In case default shall be made in the payment of any interest to accrue on any of the said bonds and such in-
22 terest shall remain unpaid and in arrear for the period of six months after the same shall have been demanded, or in case

default shall be made in the payment of the principal of any of said bonds, it shall be the duty of the trustees under these presents, upon a requisition made upon them in writing, signed by holders of a majority in interest of the said bonds, and upon adequate indemnity against all costs, expenses, and liabilities to be by the said trustees incurred, to proceed to enforce the rights of the bondholders under these presents, either by the exercise of the powers granted by these presents or by a suit or suits in equity or at law in aid of the execution of such powers or otherwise, as the said trustees shall deem most effectual for the purpose of enforcing such rights.

Article tenth. It is mutually agreed by and between the parties hereto that the word trustees, as used in these presents, shall be construed to mean the trustees or trustee under these presents for the time being, whether such trustees or trustee be the parties of the second or any successors or successor of the said parties of the second part or either of them in said trust, and whenever a vacancy shall exist to mean the survivor or continuing trustee; and it is further mutually agreed that the said trustees shall be entitled to just compensation for all services hereafter to be rendered by them in this trust, which compensation shall be paid by the said Illinois, Missouri and Texas Railway Company, of the first part, its successors or assigns; that the said trustees shall not be responsible for the default or misconduct of each other or of any agent appointed in pursuance of these presents if such agent be selected with
23 reasonable care; that the said trustees or either of them may resign and be discharged from the trust created by these presents by giving notice in writing to the said Illinois, Missouri and Texas Railway Company, of the first part, or its successor, sixty days before such resignation shall take effect, or such shorter notice as the said last-named company may accept; that said trustees or either of them may be removed by the holders of a majority in interest of the whole amount of said bonds by an instrument in writing signed by such a majority in interest, subject to the approval of the board of directors of the said last-named company, of the first part; that in case at any time hereafter the said trustees or either of them or any trustees hereafter appointed shall die or resign or be removed, as herein provided or otherwise, or shall become incapable or unfit to act in said trust, a successor to such trustee shall be appointed by the said Illinois, Missouri and Texas Railway Company upon the application and recommendation of a majority in interest of said bondholders in the bonds then outstanding, and upon any such appointment of a trustee all the powers and authorities under and by virtue of this indenture shall become vested in the new trustee so appointed, without any further assurance or conveyance, as fully as the same was vested in his predecessor.

And the said Illinois, Missouri and Texas Railway Company, of the first part, for itself, its successors and assigns, hereby, for the consideration aforesaid, further covenants, promises, and agrees to and with the said parties of the second part and the survivor of them and their and his successors in the trust by these presents created,

that the said company, its successors and assigns, shall and
24 will well and truly pay or cause to be paid unto the holder or holders of said bonds the principal and interest thereof as such principal and interest shall become payable according to to the tenor of said bonds and the terms of the coupons thereto annexed.

And the said Illinois, Missouri and Texas Railway Company, of the first part, for itself, its successors and assigns, hereby covenants and agrees to and with the said parties of the second part and the survivor of them and their and his successors in the trust created by these presents that the said railway company, its successors and assigns, *that* if its successors and assigns shall hereafter acquire any other lands, property, rights, or franchises connected with said railroad the same shall be deemed and held to be acquired, possessed, and held, and every part and parcel thereof, upon and subject to the trusts of this indenture, and the said Illinois, Missouri and Texas Railway Company, of the first part, shall and will, from time to time and at all times hereafter and as often as thereunto requested by the trustees under this indenture, execute, acknowledg*ed*, and deliver*ed* all such further deeds, conveyances, and assurances in the law for the better assuring unto such trustees upon the trust herein expressed all and singular the railroad aforesaid and all the lands and premises aforesaid, and all such other property, franchises, and rights as may hereafter be acquired by or for and connected with said railroad or railway company, as by the said trustees or by their counsel learned in the law shall be advised or required. In witness whereof the Illinois, Missouri and Texas Railway Company has caused these presents to be signed by the president of said
25 company and attested with its corporate seal and the signature of its secretary. We, Cape Girardeau and State Line Railroad Company, has [have] caused the president of said company to attest these presents by his signature and its corporate seal to be also hereunto affixed; and the said George C. Thilenius and Henry T. Blow, trustees as hereintofore stated, in pursuance of the requirements of their trust and by direction of the said companies, have also hereunto signed their names and affixed their seals; and the said Frederick S. Winston and David Hoadley have hereunto set their hands and seals to evidence the acceptance of the trust hereby created the day and year first herein written.

(Signed)

[SEAL.] THOMAS C. FLETCHER,
President Illinois, Missouri and Texas Railway Company.

Attest:

S. HARRY WRIGHT,
Secretary Illinois, Missouri and Texas Railway Company.

[Seal of Illinois, Missouri and Texas Railway Co.]

GEO. C. THILENIUS,
President Cape Girardeau and State Line Railroad.

[Seal C. G. & State Line Railroad Co.]

Attest:
H. G. FOUGEN, *Secretary.*
G. C. THILENIUS, *Trustee.*
HENRY T. BLOW, *Trustee.*

F. S. WINSTON. [SEAL.]
DAVID HOADLEY. [SEAL.]

26 CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

On this first day of December, 1871, personally appeared before me Frederick S. Winston and David Hoadley, both and each to me personally known to be the persons described in and who executed the foregoing instrument, and severally acknowledged that they executed the same for the uses and purposes therein expressed, let it be recorded.

In testimony whereof I have hereunto set my hand and official seal the day and year above written.

(Signed)
WM. W. MANN,
Notary Public, City and County of New York.
[Notarial Seal William W. Mann.]

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Charles E. Loew, clerk of the city and county of New York, and also clerk of the supreme court for said city and county, the same being a court of record, do hereby certify that William W. Mann, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn and duly authorized to take the same; and, further, that I am well acquainted with the hand-
27 writing of such notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 1st day of December, 1871.

[SEAL.] CHAS. E. LOEW, *Clerk.*

[Revenue stamp, 5 cents.]

STATE OF MISSOURI, }
County of Cape Girardeau, } *ss:*

Be it remembered that on this third day of May, A. D. eighteen hundred and seventy-one, before me, the undersigned, clerk of the circuit court in and for the said county, came Thomas C. Fletcher, president of the Illinois, Missouri and Texas Railway Company, and George C. Thilenius, president of the Cape Girardeau and State Line railroad and trustee in a certain deed mentioned in the foregoing indenture, both of whom are personally known to me to be the same

persons whose names are subscribed to the foregoing conveyance or instrument in writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned.

In testimony whereof I have set my hand and affix my official seal, at office, the date aforesaid.

[SEAL.] NATHAN C. HARRISON,
Clerk Circuit Court.

28 STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this 20th day of May, A. D. 1871, before me, the undersigned, notary public in and for said county, came Henry T. Blow, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument in writing as having executed the same, and acknowledged the same to be his act and deed as trustee for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, at St. Louis, date aforesaid.

(Signed)
[SEAL.] A. L. DEAN,
Notary Public, St. Louis Co., Mo.

STATE OF MISSOURI, } ss:
County of Cape Girardeau, }

I, Nathan C. Harrison, clerk of the circuit court in and for the county aforesaid, hereby certify that the above and foregoing instrument of writing, with the certificate, was filed for record in my office on the 15th day of January, A. D. 1872, and that the same is duly recorded in Book "D" of Trusts and Mortgages, on pages Nos. 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, and 314.

[SEAL.] NATHAN C. HARRISON,
Clerk and ex Officio Recorder.

29 XI. And your orator further shows unto your honors, on information and belief, that said deed of trust to said Winston and Hoadley was duly and properly recorded in said State of Missouri, pursuant to and in accordance with the laws of said State.

XII. And your orator further shows unto your honors, on information and belief, that after the 10th day of July, 1871, and before the commencement of this suit, the said David Hoadley, one of the trustees named in said trust deed or mortgage to him and the said Winston, died, leaving said Winston sole surviving trustee therein, and the said Winston, until his death, has been ever since the sole surviving trustee under the said last-mentioned trust deed or mortgage.

XIII. Your orator further shows that the said Frederick S. Winston, the said sole surviving trustee of the said Illinois, Missouri and Texas Railroad Company, died at the city of New York, on or about the — day of March, in the year 1885, as your orator is informed and believes, and that there is now no one appointed in his place and

stead as said trustee of the said Illinois, Missouri and Texas Railroad Company to discharge the duties of said trustee of said Illinois, Missouri and Texas Railroad Company, as is required of the said trustees nominated in the said deed of trust to said Frederick S. Winston and David C. Hoadley, as trustees of the said Illinois, Missouri and Texas Railroad Company.

XIV. And your orator further shows unto your honors, on
30 information and belief, that after the execution and delivery of the said trust deed or mortgage to said Winston and Hoadley, and after the trust therein conferred had been accepted and assumed by them and each of them, to wit, on or about the 10th day of July, 1871, the said defendant, The Illinois, Missouri and Texas Railway Company, made and issued their bonds, called "first-mortgage bonds," each bearing date on the 10th day of July, 1871, consisting of a series of 1,500 bonds, all of which were of like tenor and date, except as to the numbers thereof, said bonds being for the sum of one thousand dollars each, payable in gold coin of the United States of America, and, as your orator is informed and believes, were numbered consecutively from No. 1 to 1,500, inclusive, and amounting in the aggregate to the sum of one million and five hundred thousand dollars, and that the whole amount of the principal of said bonds was made payable on the 10th day of July, 1891, or sooner in case of default in payment of the interest to grow due thereon; and the interest thereon at 7 per centum per annum was made payable in gold coin of the United States of America, on the 10th days of January and July, in each and every year, during the said term of said bonds, at the agency of said Illinois, Missouri and Texas Railway Company, in the city of New York, in the State of New York; that attached to each of said bonds when made and issued as aforesaid, as your orator is informed and believes, were coupons numbered from five to forty, inclusive, and all being of like tenor, except as to numbers thereof and date of payment of interest on said bonds therein mentioned; that the payment of each and all
31 of said bonds, principal, and interest, is secured and was intended to be secured by said deed of trust or mortgage to said Winston and Hoadley, bearing date the said 2d day of May, 1871, and by said trust property therein conveyed to them in trust, as aforesaid, for that purpose.

XV. And your orator further shows unto your honors that he is now the *bona fide* owner and holder for value of sixty-eight of said first-mortage bonds of said Illinois, Missouri and Texas Railway Company, each one of which is for the sum of one thousand dollars, payable in gold coin of the United States of America, and that each of his said bonds was made and issued by the said Illinois, Missouri and Texas Railway Company as aforesaid in pursuance of and in accordance with said deed of trust or mortgage to said Winston and Hoadley, and that the payment of the principal and interest thereof was and is secured and was and is intended to be secured by the said trust deed or mortgage to said Winston and Hoadley, and the property thereby conveyed to them in trust as aforesaid, and that each one of the sixty-eight bonds owned and held by your orator as

aforesaid is dated July 10, 1871, and the principal thereof becomes due and payable July 10, 1891, unless made payable sooner by default in the payment of the interest, as provided in each of said bonds and in said deed of trust or mortgage to said Winston and Hoadley, to which each one of said bonds refers; that the interest on each of your orator's said bonds is payable semi-annually, at the agency of said last-named company, in the city of New York, on the 10th days of January and July in each year during the term of said bonds, respectively.

32 XVI. That coupons were and now are attached to each of said sixty-eight bonds of your orator, from Nos. 8 to 40, inclusive, each being of the same tenor except as to the numbers thereof, and the following is a full and correct copy of one of the said sixty-eight bonds and coupons thereto attached now held and owned by your orator as aforesaid:

$1,000; United States of America, State of Missouri; No. 980; Illinois, Missouri and Texas Railway Company, incorporated under the laws of Missouri; principal and interest payable in gold coin. Know all men by these presents that the Illinois, Missouri and Texas Railway Company is indebted to —— —— or bearer in the sum of one thousand dollars, in gold coin of the United States of America, which the Illinois, Missouri and Texas Railway Company hereby promises to pay to the said —— —— or the bearer thereof, in the gold coin aforesaid, on the tenth day of July, one thousand eight hundred and ninety-one, at the agency of said railway company, in the city of New York, with interest thereon at the rate of seven per centum per annum, payable semi-annually, in the gold coin aforesaid, at said agency, in the city of New York, on the tenth day of January and July in each year, on the presentation and surrender of the annexed coupons as they severally become due; and it is hereby expressly declared and agreed that in case default shall be made in the payment of any semi-annual instalment of interest on this bond when such interest shall become payable and be demanded, and such interest shall remain unpaid and in arrear for the period of six months after the same shall have been demanded, the principal of this bond may be declared and

33 made due and payable in the manner and with the effect provided in the deed of trust or mortgage hereinafter mentioned. This bond is one of a series of fifteen hundred bonds (all of which are of like tenor and date except as to the numbers thereof) of one thousand dollars each, numbered consecutively from 1 to 1500 inclusively, and amounting in the aggregate to $1,500,000, and the payment of the principal and interest of each and all of said bonds is secured by a deed of trust or mortgage bearing date the second day of May, A. D. 1871, duly executed and delivered by the said Illinois, Missouri and Texas Railway Company (and in which the Cape Girardeau and State Line Railway Company and George C. Thilenius and Henry T. Blow, trustees for said companies, have joined) to F. S. Winston and David Hoadley, as trustees, and conveying to said trustees the road-bed and all other property of the said Illinois, Missouri and Texas Railway Company and of the Cape

Girardeau and State Line Railroad Company, and all property of either or both said companies held by said trustees, being the railroad as the same now is or hereafter may be constructed from the shore of the Mississippi river in the city of Cape Girardeau, in the State of Missouri, to the boundary line between the States of Missouri and Arkansas at a point east of Ripley county, Missouri, together with the equipments and appurtenances of said railroad and the rights, privileges, and franchises thereunto appertaining, and conveying also all the right, title, and interest which the said railroad companies or either or both of them or the said trustees for them or either of them now have or shall hereafter acquire of, in, and to all and singular the lands acquired or to be acquired for said
34 railroad by either or both said companies or by said trustees for them, whether in fee simple or a less estate, from the United States of America, the State of Missouri, or from any county in said State, or otherwise. This bond shall pass by delivery or by transfer upon the books of the said Illinois, Missouri and Texas Railway Company, at the office of the treasurer thereof, and after a registration of ownership certified thereon by the treasurer or transfer agent of said company, no transfer except upon the books of the said railroad company shall be valid unless the last transfer shall have been to bearer and transferability by delivery thereby restored; but this bond shall continue susceptible of successive registrations and transfers to bearer, as aforesaid, at the option of the holder. This bond shall not become valid or obligatory until it shall have been authenticated by a certificate endorsed hereon and duly signed by said trustees or the successor or successors of said trustees in the trust deed created by the said deed, and until a further certificate shall be endorsed hereon and duly signed by the treasurer of said railroad company to the effect that this bond is registered in the books of the company.

In witness whereof the said Illinois, Missouri and Texas Railway Company has caused its corporate seal to be hereto affixed and the same to be attested by the signature of its president and secretary, and has also caused the coupons hereto annexed to be signed by its treasurer, this 10th day of July, A. D. eighteen hundred and seventy-one.

[Seal of Illinois, Missouri and Texas Railway Co.]

S. HARRY WRIGHT, *Sec'y.*
THOMAS C. FLETCHER, *Pres't.*

35 35 (Coupon No. 8.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1875, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 9.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer

thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of Jan'y, 1876, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 10.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1876, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 11.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of Jan'y, 1877, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

36 35 (Coupon No. 12.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1877, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 13.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of Jan'y, 1878, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 14.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1878, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 15.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of Jan'y, 1879, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

37 35 (Coupon No. 16.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co.,

in the city of New York, on the 10th day of July, 1879, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 17.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of Jan'y, 1880, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 18.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1880, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 19.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of Jan'y, 1881, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

38 35 (Coupon No. 20.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1881, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 21.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of Jan'y, 1882, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 22.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1882, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 23.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co.,

in the city of New York, on the 10th day of Jan'y, 1883, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

39 35 (Coupon No. 24.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1883, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 25.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of Jan'y, 1884, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 26.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1884, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 27.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of Jan'y, 1885, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

40 35 (Coupon No. 28.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1885, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 29.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of Jan'y, 1886, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 30.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co.,

in the city of New York, on the 10th day of July, 1886, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 31.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of Jan'y, 1887, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

41 35 (Coupon No. 32.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1887, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 33.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of Jan'y, 1888, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 34.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1888, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 35.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of Jan'y, 1889, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

42 35 (Coupon No. 36.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1889, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 37.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co.,

in the city of New York, on the 10th day of Jan'y, 1890, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 38.) 25

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1890, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

35 (Coupon No. 39.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 16th day of Jan'y, 1891, being six months' interest on bond No. 980.

F. A. STODDART, *Treasurer.*

43 35 (Coupon No. 40.) 35

The Illinois, Missouri & Texas Railway Co. will pay to bearer thirty-five dollars, in gold coin, at the agency of said railway Co., in the city of New York, on the 10th day of July, 1891, being six months' interest on bond No. 980.

F. A. STODDARDT, *Treasurer.*

Endorsement and Bond.

Illinois, Missouri and Texas Railway Co.

No. 980. $1,000. First-mortgage bond.

Principal and interest payable in gold. Principal payable 10th July, 1891. Interest payable on 10th January and July at the agency of the company in New York.

We hereby certify that this bond is one of a series of bonds amounting in the aggregate to $1,500,000, the payment whereof is secured by the deed of trust or mortgage within mentioned.

F. S. WINSTON, }
DAVID HOADLEY, } *Trustees.*

I hereby certify that this bond is duly registered in the books of the company.

F. A. STODDART, *Treasurer.*

[U. S. inter. revenue stamp, 50 cents.]

This bond is hereby made payable at the National Bank of Scotland, London, at two hundred pounds (£200) sterling, free of all United States Government income tax.

44 For the Illinois, Missouri and Texas Railway Company.
By their authorized agent:

J. McKAYE.

(Each of the numbered coupons bears on the back the following endorsement:)

This coupon is hereby made payable at the National Bank of Scotland, London, at seven pounds (£7) sterling, free of all United States Government income tax.

For the Illinois, Missouri and Texas Railway Company.

By their authorized agent:

J. McKAYE.

XVII. And your orator further shows unto your honors, on information and belief, that each of said sixty-eight bonds in suit and coupons attached was duly made, issued, transferred, and delivered for value by the defendant, The Illinois, Missouri and Texas Railway Company, on or after said July 10, 1871, and prior to December, 1871, to some person or persons unknown to your orator, said bonds each having first been duly signed by the president and secretary of said last-named company and the seal thereof being duly affixed thereto, and that each of said coupons attached thereto was duly signed by the treasurer of said company in pursuance of and in accordance with a resolution of the board of directors of said last-named company and said deed of trust or mortgage to said Winston and Hoadley, and each of said bonds was duly stamped, as the law required, with a fifty-cent internal revenue stamp.

45 XVIII. And your orator further shows unto your honors that each of said sixty-eight bonds, with said coupons thereto attached, so held by your orator as aforesaid, was made, issued, sold, transferred, and delivered for value to some person unknown to your orator by said defendant, the said Illinois, Missouri and Texas Railway Company, as aforesaid, prior to the time said last-mentioned bonds and coupons came into the possession and ownership of your orator aforesaid, which said sixty-eight bonds were each duly signed by the president and secretary of said last-named company and the seal of said company was duly affixed thereto, and that each of said coupons attached to said bonds was, prior to the time last aforesaid, duly signed by the treasurer of said company, and said bonds were duly stamped with a United States internal revenue stamp, and said bonds and coupons were sold and delivered by said Illinois, Missouri and Texas Railway Company as aforesaid with the intent that the same should be assigned and transferred by delivery from hand to hand without other writing.

XIX. And your orator further shows unto your honors that each of said sixty-eight bonds so held and owned by him as aforesaid was duly authenticated by a certificate endorsed thereon and duly signed by said trustees, said Frederick S. Winston and David Hoadley; and also that another certificate was duly endorsed upon each of said sixty-eight bonds of your orator and duly signed by the treasurer of said Illinois, Missouri and Texas Railway Company, to the effect that said bonds and each of them is registered in the books of said company; that each of said certificates was so en-

46 dorsed on each of said bonds of your orator, as he is informed and believes, prior to the time of the original sale and delivery of his said bonds or any or either of them by said Illinois, Missouri and Texas Railway Company and at or about the time

the same were made and issued as aforesaid; and your orator says that each of said certificates on each of his said bonds was duly endorsed and duly signed as aforesaid prior to the time when he became the owner and holder thereof as aforesaid, and that the same were and each of them was so endorsed and signed at the time he became such owner and holder of said bonds respectively.

XX. And your orator further says that, as the coupons on his said bonds respectively became due and payable from time to time, he caused application to be made to the said defendant, The Illinois, Missouri and Texas Railway Company, for payment of said interest money represented by said coupons, and offered to surrender the same from time to time as said interest money was paid, but the said company neglected and refused to pay said interest money or any part thereof, and the same is wholly unpaid.

XXI. And your orator further shows unto your honors that after the said sixty-eight bonds and coupons attached thereto had been issued and transferred, as above stated, by the defendant, The Illinois, Missouri and Texas Railway Company, that your orator purchased the said sixty-eight bonds and each of them and all the said coupons thereto attached for a valuable consideration, before the maturity of said bonds or either of them, and that he is now the holder and owner thereof for value and without notice, and is entitled to have and receive the money promised to be paid
47 in and by said bonds and coupons and each of them.

XXII. That when your orator became owner and holder of said bonds, respectively, as aforesaid, the coupons thereon marked from No. — to No. —, inclusive, were cut off and detached therefrom, and that he did not become the owner or holder thereof.

XXIII. That your orator has made or caused to be made to defendant, Frederick S. Winston, since your orator became owner of said bonds and coupons, as said coupons matured, respectively, a demand for the payment of the interest on each of said bonds, and has offered to return and surrender the coupons on each of them as they severally became due and were paid; that large sums of interest on each of said bonds have remained due and unpaid and in arrears for more than six months after the payment thereof had become due and payable and duly demanded.

XXIV. And your orator further shows to your honors, on information and belief, that his said 68 bonds, with the coupons attached, at present constitute a majority of outstanding bonds of said Illinois, Missouri and Texas Railway Company issued as aforesaid, and that by the terms of said deed of trust to said Winston and Hoadley aforesaid the said defendant, The Illinois, Missouri and Texas Railway Company, was entitled to remain in the possession, occupation, and enjoyment of said trust property and have the proceeds thereof until default should be made in the payment of the principal or interest of said bonds or some of them; but, notwithstanding default has been made in the payment of the interest money due to your orator on his said bonds as aforesaid
48 issued under said deed of trust, neither the said trustees, Winston and Hoadley, or the survivor of them have taken

possession of said railroad property mentioned in said deed of trust to them and in said bonds of your orator or any part thereof, or used, managed, and operated the same and collected and applied the proceeds or any part thereof to the payment of the principal or interest of the bonds of your orator or any part thereof, pursuant to and in accordance with the terms of said deed of trust to them; neither have the trustees or the survivor of them sold or caused to be sold said trust property or any part or portion of said trust property and caused the proceeds to be applied to the payment of either the principal or interest or any part thereof due on your orator's said bonds, as directed in said deed of trust.

XXV. And your orator has notified the said Winston, then sole survivor of said trustees, of the fact that the interest has been for a long time past due and unpaid on your orator's said bonds and of his holding the majority of said outstanding bonds as owner, and has requested said trustee in writing to take such steps as the deed of trust allowed or directed him to do, to take and collect from the said trust property so much as was necessary to pay to your orator the past, due interest on his said bonds, and in addition thereto the principal money due on your orator's said bonds, and said trustee has declined and neglected to take such proceedings, and the principal and interest on his said bonds are wholly due to your orator and remain wholly unpaid.

XXVI. And your orator further shows unto your honors,
49 on information and belief, that the Cape Girardeau and Southwestern Railway Company, one of the defendants in this suit, is a corporation duly organized and incorporated under the laws of the State of Missouri, and that said last-named company has been in the sole use, occupation, control, and enjoyment of said property vested in the said trustees, Winston and Hoadley, by virtue of said deed of trust, for several years last past, and said Cape Girardeau and Southwestern Railway Company claims a right to said property and franchise, by purchase or otherwise, prior to the lien of your orator, by virtue of the bonds heretofore mentioned and the subject of this suit.

XXVII. And your orator further shows unto your honors, on information and belief, that most or all of the aforesaid 1,500 bonds, of which your orator is not the owner, have long since come back into the possession and control of these defendants or of one or more of them, and thereby the said defendants have controlled the action of the surviving trustee named in said trust deed, to the prejudice of your orator in the collection of said interest and principal due on his said bonds and coupons.

XXVIII. That the interest and principal on his said bonds was made payable, according to the terms of said bonds, at the agency of the Illinois, Missouri and Texas Railway Company, in the city of New York, and your orator has made and caused to be made diligent search for such agency or office in said city and finds that none has been established or maintained by said defendants or either of them, and that he then made his demand for the payment of the interest and principal respectively due on said bonds and

50 coupons of the said Winston, said trustee, in the city of New York, and also of said Illinois, Missouri and Texas Railway Company in Missouri.

XXIX. And your orator further shows unto your honors, on information and belief, that a systematic, fraudulent, and continuous effort has been made and is still being made by these defendants or some of them to prevent either the collection of the interest or principal of said bonds due to your orator on said bonds and coupons, and that the property named in said trust deed to said Winston and Hoadley and in said bonds has been managed, disposed of, and controlled by these defendants or some of them in such a mysterious and obscure way as to require the equitable interposition of this honorable court to enable your orator to obtain his just rights in the premises, in that the judgment set up in bar in the defendant's plea to the cause of action alleged in the bill of complaint in this action and alleged to have been obtained on or about the 30th day of March, 1876, in the circuit court of Cape Girardeau county, Missouri, by the Cape Girardeau and State Line railroad, one of the defendants in this cause, was obtained by the said defendants in fraud against the bondholders, in that substituted service was made on Frederick S. Winston, the only surviving trustee, as Frederick S. Winston in person, and not as trustee, and that the Frederick S. Winston appeared in said action, in person only, and not as trustee for said bondholders, and then by a fraudulent agreement with the plaintiffs in said action allowed the judgment of the said court to be entered by default, after having first appeared in person, and in his individual capacity having verified an answer wherein all the matters alleged in the said petition

51 presented in said action and upon which said judgment was obtained were stated to be wholly untrue; that the said Frederick S. Winston, as trustee, made no defence, when he had personal knowledge of these facts, to wit, that the bonds were within those authorized by law to be made, and they were executed by proper authorized officers of the Illinois, Missouri and Texas Railway Company and by the Cape Girardeau and State Line Railroad Company, who were duly authorized to make, execute, negotiate, and deliver them by the proper resolutions; they were properly registered, and the trustee authorized endorsed them and negotiated them for actual cash to third persons, and that he knew that all these facts were kept from the notice and knowledge of the court granting the decree or judgment sought to be set up in bar herein; and, also, he knew the fact to be that these very bonds in question were not within the said State of Missouri, and that neither was the owner thereof. The said Frederick S. Winston had personal knowledge of the fact that Houck, the present president of the Cape Girardeau and Southwestern Railroad Company, defendant herein, was the sole attorney for the plaintiffs in the action which ended in the judgment set up in bar herein, and that the said attorney had knowledge of all the facts herein set forth, and that he, Frederick S. Winston, was violating his duty as trustee towards the bondholders whose rights it was his duty to protect, and that the said Houck

had personal knowledge that said judgment was obtained by collusion with the varied parties and attorneys appearing in said action and between him and this Frederick S. Winston, as trustee; that Frederick S. Winston knew of his own knowledge of all the facts alleged in the petition and of their untruthfulness, and that, as trustee and individually, he refrained from and wholly failed to give the holders of the bonds sought to be cancelled any notice of
52 said action or of any of the facts set out in the petition—of his failure to make any defence in their interests as trustee for them, and that the said Houck took advantage, as attorney for the plaintiff in said action, of all the neglect of the said trustee, in his duties as trustee, in allowing judgment to be taken on a false and fictitious state of facts known to him in his official capacity to be false and fictitious, which judgment had for its purpose and end the cancellation of the bonds, the rights of the innocent holders of which it was his duty to protect, pursuant to an agreement between said Houck and said Winston; and your orator further shows that he had no knowledge of the said judgment or of any of these facts till his counsel examined the record on the 22d day of August, 1884, and that he was not made a party to said action, and did not appear therein, and had no knowledge thereof till said last-named date.

XXX. And your orator does not know the real or pretended relations between defendants herein respecting the property in question or the profits, proceeds, or income derived therefrom, and prays a discovery thereof, and that said defendant or defendants found to have possession, use, management, and control of said property, or the income and proceeds derived therefrom, jointly or severally, may be decreed by this honorable court to deliver the same into the possession and under the supervision and control of this court, to be disposed of and applied, in due form of law and pursuant to the directions of this court, to the payment of said interest money and coupons due and to become due during the pending of this suit on each of said 68 bonds owned by your orator as aforesaid, and
53 also to the payment of the principal of his said bonds, and that your orator may have such other and further relief in the premises as to this honorable court shall seem just and equitable.

XXXI. And your orator prays that this honorable court will adjudge and decree—

(1.) That said deed of trust or mortgage to said Frederick S. Winston and said David Hoadley, dated the 2d day of May, 1871, is a good and valid deed of trust or mortgage, vesting in them and their successor or successors in trust the aforesaid property, rights, interests, and franchises therein mentioned and described, and that said property, rights, interests, and franchises have ever since the execution and delivery of said deed of trust or mortgage to them as aforesaid remained and continued and now were vested in said trustee, Winston, as the survivor and successor of said trustees, in trust for the uses and purposes mentioned in said deed of trust or mortgage to them, and that the aforesaid parties named therein had full power and authority to execute and deliver the same, and that the same

was duly executed and delivered, and that the said trusts therein conferred were accepted by said trustees therein named, and that the bonds of your orator and each of them are good and valid bonds and the coupons thereto annexed and each of them good and valid coupons, duly made, issued, sold, and transferred for value by the said defendant, the said Illinois, Missouri and Texas Railway Company, and that each of the said bonds and the coupons thereto attached so held and owned by your orator as aforesaid are and each of them is legally held and owned by your orator and were and each of them was duly and legally transferred to your
54 orator for value, and that the payment of each of said bonds and coupons of your orator is legally secured in and by said trust deed or mortgage to said Winston and Hoadley and the aforesaid property therein mentioned and described, and that your orator is entitled to recover in his own right out of said trust property, conveyed in trust as aforesaid to said Winston and Hoadley, the said interest money due on his said bonds and each of them appearing to be due and unpaid on said coupons thereto attached, respectively, and also the interest money on said overdue coupons, respectively, at and after the rate of seven per centum per annum from and after the time or times when the same became due and payable, respectively, as the same appears on said coupons.

(2.) And your orator prays that this honorable court will adjudge and decree that said trust property, or so much thereof as shall be found necessary for that purpose, may be sold under the order, supervision and direction of this court and the proceeds derived therefrom, or so much as shall be found necessary for that purpose, may be applied, in due form of law, to the payment of said interest money due as aforesaid to your orator on his said bonds and coupons and each of them, and that he may have execution therefor in due form of law; and your orator also prays that this honorable court will adjudge and decree that said trust property, or such part thereof as may be necessary for that purpose, may be sold under the order, supervision, and direction of this court and the proceeds derived therefrom may be applied, in due form of law, to the payment to your orator in full of the principal money of his said bonds and each of them, together with all interest due thereon.

55 (3.) And your orator prays that this honorable court will appoint a receiver to receive, take charge of, manage, and conduct said trust property and the gains and proceeds derived therefrom, in due form of law, and that the proceeds derived therefrom may be paid over to your orator and applied by said receiver in payment and discharge of said interest money due and to grow due on his said bonds and each of them.

(4.) And your orator prays that this honorable court will appoint a receiver to receive and take charge of, manage, and conduct said trust property and the gains and profits derived therefrom, in due form of law, and that the proceeds derived therefrom may be decreed to be paid over by him to your orator in payment and discharge of said principal and interest on your orator's said bonds and each of them.

(5.) And your orator further prays that this honorable court will adjudge and decree that neither of said defendants, the said Illinois, Missouri and Texas Railway Company, the said Cape Girardeau and State Line Railroad Company, the said Thilenius and Blow, trustees, aforesaid; the said Fletcher, or the said Cape Girardeau and Southwestern Railway Company or any or either of them is entitled to the continued occupation and use of said trust property or any part thereof, or to the gains, proceeds, and profits accruing therefrom, until the said interest money due on your orator's said bonds and coupons and each of them shall have been fully paid to your orator, and that this honorable court will restrain and enjoin the said last-named defendants and each of them from having and receiv-
56 ing to their own use and benefit, or to the use and benefit of any or either of them, said gains and profits and the earnings and income derived from said trust property or any part thereof until said interest money due to your orator as aforesaid shall have been fully paid to him.

(6.) And your orator further prays that this honorable court will adjudge and decree that said last-named defendants are not, nor is any or either of them, entitled to the continued occupation or use of said trust property or any part thereof, or to the gains, proceeds, and profits accruing therefrom, until the whole amount of the principal money of said bonds of your orator, including the interest money due thereon, shall have been fully paid to your orator, and that this honorable court will restrain and enjoin the said last-named defendants and each of them from having or receiving to their own use and benefit, or to the use or benefit of any or either of them, said gains, proceeds, and profits and the earnings and income from said trust property or any part thereof until the whole amount of the said principal and interest on each of said bonds of your orator shall have been fully paid to your orator.

(7.) And forasmuch as your orator can have no adequate relief except in this court, to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their and each of their corporal oaths and according to their and each of their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises and to all the several matters
57 and things hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to account for and pay over to your orator the aforesaid interest moneys due on said sixty-eight bonds of your orator and each of them, and also the principal money of your orator's said bonds, and that the said defendants may be decreed to pay the costs of this suit, and that your orator may have such further and such other relief in the premises as to this honorable court shall seem meet and as shall be agreeable to equity—

(8.) May it please your honors to grant unto your orator the writ of injunction, issuing out of this honorable court, under the seal thereof, in due form of law, restraining and enjoining the said de-

fendants, The Cape Girardeau and State Line Railroad Company, the said Illinois, Missouri and Texas Railway Company, the said Cape Girardeau and Southwestern Railway Company, the said George C. Thilenius and Henry T. Blow, trustees as aforesaid, and the said Thomas C. Fletcher, and each of them, and their and each of their servants, agents, attorneys, workmen, successors, and assigns, as hereinbefore in that behalf prayed.

(9.) May it please your honors to grant unto your orator the writ of subpœna, issuing out of and under the seal of this honorable court, directed to said defendants, the said Illinois, Missouri and Texas Railway Company, the said Cape Girardeau and State Line Railroad Company, the said Cape Girardeau and Southwestern Railroad Company, the said George C. Thilenius and Henry T. Blow, trustees aforesaid; the said Thomas C. Fletcher and the said
58 Frederick S. Winston, trustees aforesaid, or their successors, directed to the said defendants and each of them, commanding them and each of them, by a certain day and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises and to stand to and abide such order and decree as may be made against them.

And your orators will ever pray, etc.

HENRY H. DENISON,
Solicitor for Complainant.

UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK, } *ss:*
City and County of New York, }

On this, the 23 day of December, 1885, before me personally appeared S. Granville Beals, the above-named complainant, who, being by me duly sworn, deposes and says that he has heard read the foregoing amended bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to such matters as are therein stated on information and belief, and as to those matters he believes it to be true.

S. G. BEALS.

Sworn to before me this 23 day of December, 1885.

GEO. R. CARRINGTON,
Notary Public (137), *City and County of New York.*

[SEAL.]

59 And afterwards, to wit, on the first day of February, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

S. GRANVILLE BEALS, Complainant,
vs.
ILLINOIS, MISSOURI & TEXAS R'Y CO. *et al.*, Defendants. } 2549.

On motion, it is ordered that the demurrer of defendants Fletcher and Thilenius stand, be taken, and considered as demurrers to the amended bill herein.

Pleas and Answers Filed.

By leave of court defendants, The Cape Girardeau and Southwestern Railway Company and The Cape Girardeau and State Line Railroad, file separate pleas and answers to the amended bill of complaint herein.

Said demurrer of Thomas C. Fletcher is in words and figures following, to wit:

Demurrer of Thos. C. Fletcher.

UNITED STATES OF AMERICA, *Eastern District of Missouri:*

In the Circuit Court of the United States for the District of Missouri.

S. GRANVILLE BEALS
vs.
THOS. C. FLETCHER *et als.* } Equity. No. 2549.

The demurrer of Thomas C. Fletcher, defendant, to the bill of complaint of S. Granville Beals, the above-named plaintiff.

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth that the said bill does not state a cause of action or any grounds which in equity or otherwise can entitle said plaintiff to any discovery or relief as against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur
60 to said bill and to all the matters and things therein contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to said bill, and prays to be hence dismissed with his reasonable costs in this behalf expended.

I certify that, in my opinion, the foregoing demurrer of Thomas C. Fletcher to the bill of complaint of S. Granville Beals, complainant, is well founded in law and proper to be filed in the above cause.

T. W. B. CREWS,
Solicitor & of Counsel for Def'ts.

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

Thomas C. Fletcher, being duly sworn, does depose and say that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

THO. C. FLETCHER.

Signed & sworn to before me this 28th day of Sept., 1885.

A. P. SELBY, *Clerk.*

Said demurrer of George C. Thilenius is in words and figures following, to wit:

Demurrer of Geo. C. Thilenius.

UNITED STATES OF AMERICA, *Eastern District of Missouri:*

In the Circuit Court of the United States for the District of Missouri.

S. GRANVILLE BEALS
vs.
GEORGE C. THILENIUS *et als.* } Equity. No. 2549.

The demurrer of George C. Thilenius, defendant, to the bill of complaint of S. Granville Beals, the above-named plaintiff.

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in manner and form as the same is therein
61 set forth and alleged, doth demur to said bill, and for cause of demurrer showeth that said complainant hath not by his said bill made such a case as entitles him in a court of equity to any discovery or relief from or against this defendant touching the matters contained in the said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant doth demur to said bill and to all the matters and things therein contained, and humbly prays judgment of this honorable court whether he shall be compelled to make any further or other answer to said bill, and prays to be hence dismissed with his reasonable costs in this behalf expended.

I certify that, in my opinion, the foregoing demurrer of George C. Thilenius to the bill of complaint of S. Granville Beals, complainant, is well founded in law and proper to be filed in the above cause.

THO. C. FLETCHER,
Solicitor and of Counsel for Def'ts.

UNITED STATES OF AMERICA, } *ss:*
Eastern District of Missouri, }

Tho. C. Fletcher, solicitor, being duly sworn, does depose and say that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

THO. C. FLETCHER, *Sol.*

Signed and sworn to before me this 28th day of Sept., 1885.

A. P. SELBY, *Clerk.*

Said plea and answer of the Cape Girardeau Southwestern Railway Co. is in words and figures following, to wit:

Plea & Answer of Cape Girardeau S. W. R'y Co.

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

In the Circuit Court in and for said District. In Equity. No. 2549.

62 S. GRANVILLE BEALS, Plaintiff,
vs.
CAPE GIRARDEAU SOUTHWESTERN RAILWAY COMPANY, Impleaded with Illinois, Missouri and Texas Railway Company *et al.*, Defendants.

The pleas of Cape Girardeau Southwestern Railway Company (in the bill by mistake called Cape Girardeau and Southwestern Railway Company), one of the above-named defendants, to the amended bill of complaint of S. Granville Beals, plaintiff, in so far as it relates to this defendant, and the answer of said defendant in support of and fortifying the first plea in this behalf pleaded.

First plea. This defendant, to all parts of the said amended bill which relate to this defendant, and also to all the discovery thereby sought as against it and all relief asked against it in and by the said amended bill, *this defendant* does plead in bar, and for plea saith—

That heretofore, to wit, on or about the 30th day of March, 1876, the Cape Girardeau and State Line railroad, one of the defendants in this cause, commenced its action in the circuit court of Cape Girardeau, Missouri, that being a court of general jurisdiction and possessed of full chancery powers, and the largest part of the real estate the title of which was to be affected by said action being then situate in said county, and the principal office and chief place of business of said company being by law and in fact located in said county, in the petition in which said action it was alleged and set out, among other things, that in the year 1869 the said Cape Girardeau and State Line railroad began the construction of a railroad from the city of Cape Girardeau to the State line of Arkansas in a southwesterly direction to the southern line of the State of Missouri in the county of Butler, in said last-mentioned State; that it acquired the right of way, surveyed, cut out, and graded a distance of thirty-nine miles of its roadway of its proposed railroad from the city of Cape Girardeau in said southwesterly direction through the
63 counties of Cape Girardeau, Bollinger, and Stoddard, in the State of Missouri, and that the said right of way and roadway, starting from said city of Cape Girardeau, was of a width of 100 feet, and that it constructed the bridges over and across the various streams intersecting its right of way and roadway, except the bridge across Castor river, and that it otherwise expended large sums of money and did much work on said right of way and roadway as aforesaid.

That all of said work aforesaid on said roadway was paid for by the stockholders of said plaintiff and by no one else; that afterwards a proposition was made by Thomas C. Fletcher to the direc-

tory of said railroad to build its said road on said roadway ni said southeasterly direction as aforesaid, and that he proposed to organize a new corp oration to construct, build, and equip the railroad of said Cape Girardeau and State Line railroad.

That subsequent thereto the Illinois, Missouri and Texas Railway Company was organized by said Thos. C. Fletcher proposing to build the road of said plaintiff, as contractor, under the contract to be made by said T. C. Fletcher with said plaintiff.

That the proposition and terms of said T. C. Fletcher upon which it was proposed to build the road of the said plaintiff was pretended to be submitted to the stockholders of said plaintiff, but that the said stockholders' meeting was not legally and properly called nor proper notice given thereof, and that no legal meeting of the stockholders was held in that behalf.

That afterwards the then board of directors of the said plaintiff illegally and without authority made a different and other contract than that proposed by said T. C. Fletcher, providing that the property of said plaintiff should be conveyed to Geo. C. Thilenius and Henry T. Blow, as trustees; that said trustees should join in the execution of a mortgage of its property to secure certain bonds, and that the proceeds of the bonds should be used to build the road; and, further, that said contract provided that the said plaintiff should cease to exist and voluntarily disband as a corporation, and that all of these provisions of said contract were made and entered into by said then board of directors of said plaintiff without the consent or assent, expressed or implied, of the stockholders of said plain-
64 tiff in that behalf and in fraud of the rights of said stockholders, and that at no time the stockholders of said plaintiff authorized the conveyance of the property of said plaintiff to said G. C. Thilenius and H. T. Blow as aforesaid.

That at no time the stockholders of the said plaintiff authorized the then directors of said plaintiff to mortgage its road and franchises to secure the bonds of another corporation; that at no time the stockholders of said plaintiff authorized a contract to be made providing for the extinguishment and dissolution of said plaintiff corporation, and that the action of said plaintiff's board of directors in that behalf was contrary to law, without power, and fraudulent.

That in pursuance of said contract, on the 6th day of April, 1871, the said board of directors authorized G. C. Thilenius, at that time president of said plaintiff, to convey by deed to himself and Henry T. Blow the right of way of said plaintiff as aforesaid, already described, and the rights, privileges, and appurtenances thereto belonging, all cross-ties and all lands, embracing 840 acres at the junction of said plaintiff's roadway with the St. Louis and Iron Mountain railroad; all tools, maps, furniture, and one hundred and eighty thousand dollars in bonds of the city and township of Cape Girardeau, to it paid for its stock, and that said property and effects as aforesaid was [were] pretended to be conveyed and assigned to said G. C. Thilenius and H. T. Blow on the 2nd day of May, 1871.

That said trustees, G. C. Thilenius and H. T. Blow, joined in the execution of a deed of trust, made and executed by the Illinois,

Missouri and Texas Railway Company on the property heretofore set out, to Frederick S. Winston and David Hoadly, as trustees; that said David Hoadly had since died, leaving said Frederick S. Winston, one of the defendants herein, sole surviving trustee; that said deed of trust was made and executed for the purpose of securing 1,500 bonds of 1,000 dollars each of said Illinois, Missouri and Texas Railway Company, and that said G. C. Thilenius and Henry T. Blow did not attach a seal to their said names, and that, so far as the said G. C. Thilenius and Henry T. Blow were concerned, the said deed of trust was not sealed by them; that the
65 action of the board of directors of said plaintiff in authorizing said G. C. Thilenius and Henry T. Blow to sign said deed was illegal and fraudulent; that by said deed of trust the bonds of the Illinois, Missouri and Texas Railway Company, numbering from one to 1,500, each for 1,000 dollars, payable in gold, were pretended to be secured by said plaintiff; that said bonds pretended to refer to a contract between the said Cape Girardeau and State Line railroad and the said Illinois, Missouri and Texas Railway Company, but that the said bonds did not show any liability of plaintiff; that in said deed of trust the road-bed of plaintiff, together with right of way, depot grounds, and other lands, tracks, bridges, viaducts, and other structures, all the station-houses, outhouses, sheds, and other buildings and shops, and all machinery, tools, and all real estate of the said plaintiff, namely, 840 acres of land at the intersection of the St. Louis, Iron Mountain and Southern railway and the said Cape Girardeau and State Line railroad, were pretended to be conveyed to said trustees, F. S. Winston and David Hoadly, to secure the said holders of the bonds of the Illinois, Missouri and Texas Railway Company.

That on said 2nd day of May, 1871, the seal of said plaintiff was fraudulently attached to said deed of trust by its then secretary and the name of plaintiff signed thereto by its president, George C. Thilenius, without any authority having been given in that behalf by the directors of the said plaintiff and without the consent of the stockholders, express or implied, and that at the time the said seal of said plaintiff was attached to said deed of trust and its name affixed by its president the legal title of said right of way, real estate, and other property described and set out was in the said G. C. Thilenius and Henry T. Blow, as trustees, and not in the said plaintiff.

That in December, 1871, the said Geo. C. Thilenius and Henry T. Blow, as trustees as aforesaid, reconveyed to the said plaintiff the property to them conveyed by the conveyance heretofore mentioned, and that the said Geo. C. Thilenius and Henry T. Blow did not, while the said real estate was in them, convey or join in any
66 conveyance, mortgage, or deed of trust legal and binding upon the said plaintiff.

That at the time the said George C. Thilenius and Henry T. Blow reconveyed the said real estate aforesaid the said deed of trust aforesaid had not been filed for record or recorded in the proper counties in which the same should have been recorded; that at said time

and ever since the said Illinois, Missouri and Texas Railway Company and said Thomas C. Fletcher wholly failed to build said railroad of plaintiff as contracted in that behalf, and that the same was as yet unfinished; that the contract made by the said plaintiff's board of directors and said T. C. Fletcher was rescinded, cancelled, and set aside by mutual consent on the 14th day of December, 1871; that at said time no bond or bonds of the Illinois, Missouri and Texas Railway Company secured by said deed of trust had been issued by it or its agents; that at said time notice was given in New York and London by said Thomas C. Fletcher notifying all persons not to purchase said bonds; that the said Illinois, Missouri and Texas Railway Company has since that time in some way issued said bonds, and that the same were then held by the defendants in said suit and other persons who are to the plaintiff unknown, and that these holders by reason of the premises set up and claim right of title to the right of way, road-way, track, superstructure, franchises, appurtenances, land, and other property theretofore set out by the plaintiff.

That the said bonds of the said Illinois, Missouri and Texas Railway Company pretended to be secured by said deed of trust on the property of the said plaintiff were held by the defendants in said suit, but that they were not purchasers for value, but held them merely as collateral security, and that the holders of said bonds had not paid value for them, and that the said plaintiff was unable to state particularly the amount or number of the bonds held by each of the said defendants in that behalf.

That all of the holders of said bonds falsely and fraudulently pretended to be *bona fide* purchasers of said bonds for value and fraudulently pretended to have some right, title, and interest in the aforementioned property, estate, and franchises of the said plaintiff,
67 and that by reason of these false and fraudulent pretences the plaintiff was greatly hindered and harassed in the completion and construction of its said railroad and otherwise greatly damaged.

That the deed of trust executed by said Illinois, Missouri and Texas Railway Company, so far as the property, estate, and franchises of said plaintiff aforesaid is concerned, was null and void and fraudulent, and that the said board of directors of the plaintiff had no right or power to authorize the president of said plaintiff, as such president, to join in the execution of the same as security for bonds to be issued by the Illinois, Missouri and Texas Railway Company, and that said George C. Thilenius had no authority to sign said deed as president of said plaintiff, and that the secretary of said plaintiff had no authority to attach the seal of said plaintiff thereto; that the stockholders of plaintiff did not authorize the execution of said deed of trust to secure the bonds of the said Illinois, Missouri and Texas Railway Company, and that the charter and by-laws of the said plaintiff did not authorize it to mortgage its road, lands, rights of way, and franchises to secure the bonds of another corporation, and that the laws of the State did not authorize it, and that all and every of the holders of the said bonds of the Illinois, Missouri and Texas Railway Company had full, ample, and complete notice of all the facts

in the case, in fact and in law, and that all pretences to the contrary in that behalf were fraudulent and covinous, and that the illegal acts and proceedings of the said plaintiff's directors and officers and the fraudulent pretences of the defendants in said suit had created a cloud upon the title of the said plaintiff, who was then and always had been in the quiet and peaceable possession of the premises therein set out.

That in and by said petition in said cause it was prayed that said mortgage, as well as the bonds purporting to be secured thereby, and the conveyance from said railroad to said Winston and Hoadly, as trustees, to secure the bonds of the Illinois, Missouri and Texas Railway Company, be declared fraudulent and be cancelled, set aside, and be declared null, void, and of no effect as against
68 said Cape Girardeau and State Line railroad and no lien or charge upon its property, rights, and effects, as also for general relief; all of which will more fully appear by the petition in said cause, as the same is set out in a certified copy of the record thereof, prayed to be taken as a part of this plea, and which will be produced on the hearing thereof if production thereof is demanded; and this defendant avers that the deed of trust so sought to be cancelled, set aside, and vacated in and by said suit is the identical deed of trust or mortgage mentioned and set out by the plaintiff, S. Granville Beals, in this present suit in his amended bill of complaint herein, reference to which amended bill is hereby made for the particulars of said deed of trust; and this defendant further avers that in said action in said circuit court of Cape Girardeau county, Missouri, the said Cape Girardeau and State Line railroad was the plaintiff and the Illinois, Missouri and Texas Railway Company, Frederick S. Winston, as sole surviving trustee in said deed of trust, and a large number of corporations and individuals claiming to be holders of bonds secured by said mortgage, as well as all other persons whose names were unknown, but who might claim to be holders of such bonds, were made defendants.

That the said Illinois, Missouri and Texas Railway Company was duly and actually served with process in said suit, as were also various other defendants claiming to be holders of bonds, and the said Frederick S. Winston, sole surviving trustee as aforesaid, as well as all the bondholders who could be named but who were non-residents, together with all unknown bondholders, were duly summoned and served with process by publication, as required by law.

That afterwards the said Illinois, Missouri and Texas Railway Company and the said Frederick S. Winston, as sole surviving trustee, as well as many bondholders, entered their appearance in said cause in said court and pleaded therein.

That afterwards, on the petition of said Frederick S. Winston, as sole surviving trustee and as such a defendant in said suit, and of
69 William J. Alt, one of the holders of the bonds and a defendant, as such, in said suit, and perhaps of others, said cause was attempted to be removed from the said circuit court of Cape Girardeau county into the circuit court of the United States for the eastern

district of Missouri, but that such proceedings were had in this last-named court in said cause that the same was remanded to the said circuit court of Cape Girardeau county, and said Illinois, Missouri and Texas Railway Company and said Winston, as sole surviving trustee, and said William J. Alt, and other defendants, appeared and answered, denying all the allegations of the said petition, averring the validity of all of said contracts, deeds, and mortgage, and the lien of the latter and of the bonds secured thereby upon the said property, and putting all the allegation- of plaintiff in its said petition set out in issue.

That thereupon said cause, being at issue, was afterwards proceeded with in said last-named court according to the usual and regular practice and course of proceeding in such cases provided until the January term, 1878, of the said court, at which term said cause came on for hearing and trial according to the usual and orderly practice, and the same was heard and tried in due course and form of law, and on hearing and trial thereof said court, to wit, the circuit court of Cape Girardeau county, Missouri, during the January term, 1878, on, to wit, the 25th day of January, 1878, being the 17th day of said term, rendered the following judgment and decree therein—that is to say:

STATE OF MISSOURI, } *ss:*
County of Cape Girardeau, }

In the Circuit Court of Cape Girardeau County. January Term, 1878.

FRIDAY, *January 25th*, 1878—seventeenth day.

THE CAPE GIRARDEAU AND STATE LINE RAILROAD, Plaintiff,
against
THE ILLINOIS, MISSOURI AND TEXAS RAILWAY, THE BANK OF NORTH AMERICA, Mercantile Bank, State Savings Institution, St. Louis Bridge and Construction Company, Springfield Iron Company; W. R. McKeen and D. W. Minshall, composing the firm of McKeen and Minshall; Thomas D. Price and ——, composing the firm of T. D. Price & Co.; William W. Mann, Frederick S. Winston, Andreas Holtz, Eli J. Crandall, W. K. Goodrich, William J. Alt, James McKaye, J. F. H. Trautman, and All Holders of Bonds of The Illinois, Missouri and Texas Railway Company who are unknown to this Plaintiff, and all of whom are made Defendants to this Petition, Defendants.

70

And this cause being now called for trial and hearing, the court finds that the Illinois, Missouri and Texas Railway Company, The Bank of North America, The Mercantile Bank, The State Savings Association, The St. Louis Bridge and Construction Company, Eli J. Crandall, W. K. Goodrich, Junior, and Thomas D. Price, have been duly served with personal process and notice of this action according to law, and that Frederick S. Winston, William W. Mann, Andreas Holtz, William J. Alt, James McKaye, J. F. H. Trautman, The Springfield Iron Company, W. K. McKeen, Delos S. Minshall,

and all the holders of bonds of the Illinois, Missouri and Texas Railway Company, who are to the plaintiff unknown, have been duly and legally served with process and notice of the cause of action herein by publication, in compliance with and conformity of the law and practice of the court; and further finds that the said Illinois, Missouri and Texas Railway Company, The State Savings Association, The St. Louis Bridge and Construction Company, Eli J. Crandall, W. K. Goodrich, Junior, Thomas D. Price, William J. Alt, J. F. H. Trautman, Andreas Holtz, W. R. McKeen, Delos S. Minshall, and Frederick S. Winston have appeared and pleaded and answered to the plaintiffs' cause of action herein by their respective attorneys; and the court further finds that the Cape Girardeau and State Line railroad was duly and legally incorporated by the laws of the State of Missouri, and that the Illinois, Missouri and Texas Railway Company, The Bank of North America, The Mercantile Bank, The State Savings Association, The St. Louis Bridge and Construction Company, The Springfield Iron Company, are corporations duly incorporated according to law.

71 And further finds that in the year 1869 the plaintiff began the construction of a railroad from the city of Cape Girardeau to the State line of Arkansas in a southwesterly direction to the southern line of the State of Missouri in the county of Butler, in said last-mentioned State; that plaintiff acquired the right of way, surveyed, cut out, and graded a distance of thirty-nine miles of its roadway of its proposed railroad from the city of Cape Girardeau, in said southwesterly direction, through the counties of Cape Girardeau, Bollinger, and Stoddard, in the State of Missouri, and that the said right of way and roadway, starting from said city of Cape Girardeau, is of a width of 100 feet, and the said plaintiff constructed the bridges over and across the various streams intersecting its said right of way and roadway, except the bridge across Castor river, and that said plaintiff otherwise expended large sums of money and did great work on said right of way and roadway as aforesaid.

That all of said work aforesaid on said roadway was paid for by the stockholders of said plaintiff and by no one else; that afterwards — proposition was made by Thomas C. Fletcher to plaintiff's then directory to build its said railroad on said roadway in said southwesterly direction as aforesaid, and that he proposed to organize a new corporation to construct, build, and equip the railroad of your plaintiff.

That subsequent thereto the Illinois, Missouri and Texas Railway Company was organized by said Thos. C. Fletcher proposing to build the road of your plaintiff as contractor under the contract to be made by said T. C. Fletcher with plaintiff.

That the proposition and terms of said T. C. Fletcher upon which it was proposed to build the road of plaintiff was pretended to be submitted to the stockholders of plaintiff, but that the said stockholders' meeting was not legally and properly called, nor proper notice given thereof, and that no legal meeting of the stockholders was held in that behalf.

The court further finds that afterwards the then board of directors

of the plaintiff illegally and without authority made a different and other contract than that proposed by said T. C. Fletcher providing that the property of plaintiff should be conveyed to Geo. C.
72 Thilenius and Henry T. Blow as trustees; that said trustees should join in the execution of a mortgage to secure certain bonds, and that the proceeds of the bonds should be used to build the road; and, further, that said contract provided that the plaintiff should cease to exist and voluntarily disband as a corporation, and that all of these provisions of said contract were made and entered into by said then board of directors of plaintiff without the consent or assent, expressed or implied, of the stockholders of the plaintiff in that behalf and in fraud of the rights of said stockholders, and that at no time the stockholders of plaintiff authorized the conveyance of the property of plaintiff to said G. C. Thilenius and H. T. Blow as aforesaid.

That at no time the stockholders of the plaintiff authorized the then directors of plaintiff to mortgage its road and franchises to secure the bonds of another corporation; that at no time the stockholders of plaintiff authorized a contract to be made providing for the extinguishment and dissolution of plaintiff's corporation, and that the action of the plaintiff's board of directors in that behalf was contrary to law, without power, and fraudulent.

The court further finds that, in pursuance of said contract, on the 6th day of April, 1871, the said board of directors authorized G. C. Thilenius, at that time president of plaintiff, to convey by deed to himself and Henry T. Blow the right of way of plaintiff, as aforesaid, already described, and the rights, privileges, and appurtenances thereto belonging, all cross-ties and all lands, embracing 840 acres at the junction of plaintiff's roadway with the St. Louis and Iron Mountain railroad; all tools, maps, furniture, and one hundred and eighty thousand dollars in bonds, and that said property and effects as aforesaid was pretended to be conveyed and assigned to said G. C. Thilenius and H. T. Blow on the 2nd day of May aforesaid, 1871.

And the court further finds that said trustees, G. C. Thilenius and H. T. Blow, joined in the execution of a deed of trust made and executed by the Illinois, Missouri and Texas Railway Company, on the property heretofore set out, to Frederick S. Winston and David Hoadly, as trustees, and that said David Hoadly has died,
73 leaving said Frederick S. Winston, one of defendants herein, sole surviving trustee, and which said deed of trust was made and executed for the purpose of securing the 1,500 bonds of 1,000 dollars each of said Illinois, Missouri and Texas Railway Company, and that said G. C. Thilenius and Henry T. Blow did not attach a seal to their said names, and that, so far as the said G. C. Thilenius and Henry T. Blow are concerned, the said deed of trust is not sealed by them.

And the court further finds that the action of the board of directors of plaintiff in authorizing said G. C. Thilenius and Henry T. Blow to sign said deed was illegal and fraudulent; and that by said deed of trust the bonds of the Illinois, Missouri and Texas Railway

Company, numbering from one to 1,500, each for 1,000 dollars, payable in gold, pretended to be secured by plaintiff; that said bonds pretend to refer to a contract between the Cape Girardeau and State Line railroad and the Illinois, Missouri and Texas Railway Company, but that the said bonds do not show any liability of plaintiff; and that in said deed of trust the road-bed of plaintiff, together with right of way, depot grounds, and other lands, tracks, bridges, viaducts, culverts, and other structures, all the station-houses, outhouses, sheds, and other buildings and shops, and all machinery, tools, and all real estate of the plaintiff, namely, 840 acres of land at the intersection of the St. Louis & Iron Mountain and Cape Girardeau and State Line railroad, pretended to be conveyed to said trustees, F. S. Winston and David Hoadly, to secure the said holders of the bonds of the Ill., Mo. and Texas Railway Company.

And the court further finds that on said 2nd day of May, 1871, the seal of plaintiff was attached fraudulently to said deed of trust, without any authority having been given in that behalf by the directors of the plaintiff, by the then secretary, and without the consent of the stockholders, express or implied, and that at the time the said seal of plaintiff was attached to said deed of trust the legal title to said right of way, real estate, and other property described and set out was in the said G. C. Thilenius and Henry T. Blow and not in the plaintiff.

The court further finds that in December, 1871, the said
74 Geo. C. Thilenius and Henry T. Blow reconveyed to the plaintiff the property to them conveyed by the conveyance heretofore mentioned, and that the said Geo. C. Thilenius and Henry T. Blow did not, while the said real estate was in them, convey or join in any conveyance, mortgage, or deed of trust legal and binding upon the plaintiff.

And the court further finds that at the time the said George C. Thilenius and Henry T. Blow reconveyed the said real estate aforesaid the said deed of trust aforesaid had not been filed for record or recorded in the proper counties in which the same should have been recorded; that at said time and ever since the said Illinois, Missouri and Texas Railway Company and said Thomas C. Fletcher wholly failed to build said railroad of plaintiff as contracted in that behalf, and that the same is as yet unfinished; that the contract made by the board of the plaintiff's directors and said T. C. Fletcher was rescinded, cancelled, and set aside by mutual consent on the 14th day of December, 1871, and that at said time no bond of the Illinois, Missouri and Texas Railway Company secured by said deed of trust had been issued by it or its agents, and that at said time notice was given in New York and London notifying all persons not to purchase said bonds by said Thomas C. Fletcher; that the said Illinois, Missouri and Texas Railway Company has since that time in some way issued said bonds, and that the same are now held by defendants and other persons who are to the plaintiff unknown, and that these holders, by reason of the premises set up, claim right and title to right of way, roadway, track, superstructure, franchises, ap-

purtenances, land, and other property heretofore set out by the plaintiff.

And the court further finds that the said bonds of the said Illinois, Missouri and Texas Railway Company pretended to be secured by said deed of trust on the property of the plaintiff are held by defendants, who are not purchasers for value, but as collateral security, and that the holders of said bonds have not paid value for them, and that the plaintiff is unable to state particularly the amount or number of the bonds held by each of said defendants in that behalf; that all of the holders of said bonds now falsely
75 and fraudulently pretend to be *bona fide* purchasers of said bonds for value and fraudulently pretend to have some right, title, and interest in the aforementioned property, estate, and franchises of the plaintiff, and that by reason of these false and fraudulent pretences the plaintiff is greatly hindered and harassed in the completion and construction of its said railroad and otherwise greatly damaged.

The court further finds that the deed of trust executed by said Illinois, Missouri and Texas Railway Company, so far as the property, estate, and franchises of plaintiff aforesaid is concerned, is [are] null and void and fraudulent, and that the said board of directors of the plaintiff had no right or power to authorize the president of plaintiff, as such president, to join in the execution of the same as security for the bonds to be issued by the Illinois, Missouri and Texas Railway Company, and that said George C. Thilenius had no authority to sign said deed as president of plaintiff, and that the secretary of said plaintiff had no authority to attach the seal of the plaintiff thereto; that the stockholders of plaintiff did not authorize the execution of said deed of trust to secure the bonds of the said Illinois, Missouri and Texas Railway Company, and that the charter and by-laws of the plaintiff did not authorize it to mortgage its roads, lands, rights of way, and franchises to secure the bonds of another corporation, and that the laws of the State did not authorize it, and that all and every of the holders of the said bonds of the Illinois, Missouri and Texas Railway Company had full, ample, and complete notice of all the facts in the case, in fact and in law, and that all pretences to the contrary in that behalf are fraudulent and covinous, and that the illegal acts and proceedings of the plaintiff's directors and officers and the fraudulent pretences of the defendants have created a cloud upon the title of the plaintiffs, who are now and always have been in the quiet and peaceable possession of the premises herein set out, and that the several matters set up and out in the several answers herein filed by defendants constitute no defense to the plaintiff's rights and interests and confer no right and interest to or in the property of the plaintiff, as set out heretofore.

76 Wherefore, the premises considered, the court orders, adjudges and decrees the said deed of trust executed by the Illinois, Missouri and Texas Railway Company, together with George C. Thilenius and Henry T. Blow, and also pretended to be executed

by plaintiff, and which said deed of trust is in words and figures following:

(Here follows the deed of trust with the acknowledgments thereof and the certificate of record of the same in the office of the clerk and *ex officio* recorder of Cape Girardeau county as the same are set out and copied in the amended bill of complaint in this present cause, the same being omitted here from the copy of said decree for brevity, and after setting out said deed and acknowledgments and certificate said decree then proceeds as follows:) "Null, void, and fraudulent and of no effect as to the rights and property of the plaintiff herein and therein described, the Cape Girardeau and State Line railroad, and further adjudges, orders, and decrees that the said Frederick S. Winston, surviving trustee mentioned in said deed of trust, his agents, attorneys, successors in office, and all others acting or pretending to act under or for him, be, and hereby are, perpetually restrained and enjoined from pleading and setting up said deed of trust as to this plaintiff, attempting to intermeddle, sell, dispose, or attempting to sell or dispose of the said roadway, superstructure, franchises, land, and other appurtenances appertaining to said plaintiff, either in New York or elsewhere, for the benefit, use, and behoof of said defendants—that is to say, The Illinois, Missouri and Texas Railway Company, the Bank of North America, Mercantile Bank, State Savings Institution, St. Louis Bridge and Construction Company, W. R. McKeen and D. W. Minshall, composing the firm of McKeen and Minshall; Thomas D. Price, William W. Mann, Frederick S. Winston, Andreas Holtz, Eli J. Crandall, W. K. Goodrich, William J. Alt, James McKaye, J. F. H. Trautman, and all the unknown holders of said bonds of the Illinois, Missouri and Texas Railway Company or their assignees; and further orders, adjudges, and decrees that the said defendants aforesaid have no right, title, or interest, by reason of being holders of said bonds, in the property of the plaintiff described in said deed of trust, being the property of the Cape Girardeau and State
77 Line railroad, and that they and their heirs, administrators, executors, and assigns be perpetually enjoined and restrained from — anywise or manner interfering with the property and estate of plaintiff by reason of being holders of said bonds or any of them, and orders, decrees, and adjudges that each and every of said defendants, their heirs, administrators, assigns, and successors in office, be perpetually enjoined and restrained not to set up or assert any title to said estate in said deed of trust aforesaid described as against this plaintiff or its assigns, or to disturb or any further harass the said plaintiff, and that the plaintiff recover of and from the said defendants its costs in this behalf expended, and have hereof execution."

A duly certified copy of said decree is hereto annexed and filed and prayed to be taken as part of this plea, and all of which said proceedings are of record of the records of said court, as will more fully appear by a duly certified copy thereof, to be produced on the hearing of this plea should the same be required.

And this defendant avers that this decree is the same decree re-

ferred to in the 29th paragraph of the amended bill of complaint of the plaintiff and there incorrectly called a judgment, and erroneously stated therein to have been obtained on or about the 30th day of March, 1876, instead of the 25th day of January, 1878.

And this defendant avers that said decree was obtained on due and legal service of process in the cause in which it was rendered as aforesaid upon the parties defendant as aforesaid, and was rendered after the appearance of the said parties defendant thereto on hearing and without any fraud, covin, or concealment of any kind whatsoever; that said Frederick S. Winston was made a party to said suit, as sole surviving trustee, and served with process therein; that he answered in said cause as such, and that as such trustee owning and holding the legal title to said property and representing all the bondholders purporting to be secured by the aforesaid deed of trust, he defended said suit, removed the same from the said circuit court of Cape Girardeau county to the circuit court of the United States in and for the eastern district of Missouri, from whence it was afterwards remanded back to said State court; that the said decree was obtained without any collusion between
78 the party plaintiff therein and the defendants therein or their attorneys, and without any collusion whatever between the attorney who represented the plaintiff therein and the said Winston and upon the hearing of proofs; that it was obtained without any suppression of the truth or false suggestion, and that it was obtained without any agreement or understanding of any kind whatever between the said Houck and said Winston.

And this defendant avers that by force of said decree the deed of trust now here sued on by the complainant in this suit, and set out and described by him in his amended bill of complaint, was cancelled, set aside, and declared null and void, and that all the property in said deed of trust included was thereby freed and discharged from the lien thereof.

And this defendant avers that the complainant, as well as all other holders of bonds secured or purporting to be secured by said deed of trust, held whatever right, lien, claim, or interest they had upon said property in said amended bill described through said Winston and Hoadly and the survivor thereof, or the heirs and assigns of such survivor, and not otherwise, and that whatever claim or lien they have or had to said premises and property is and was through such trustee and the survivor thereof, or the heirs and assigns of such survivor, and that they and each of them were represented in such suit by said Winston, as trustee, and are concluded thereby.

That said decree, rendered as aforesaid by said court on January 25th, 1878, has never been appealed from nor has any writ of error been sued out thereon, as might have been done, under the laws of this State, at any time within 3 years from the rendition thereof, nor has the same been in any manner reversed, modified, set aside, or in any manner assailed by bill of review or otherwise, but from the rendition thereof hitherto has been and yet is in full force and effect.

That after the rendition of said decree duly certified copies of the

same were duly recorded in the office of the recorder of deeds, where said deed of trust to said Winston and Hoadly had been recorded.

And this defendant avers that it is entitled to the benefit
79 of said decree in this, to wit:

That by mesne conveyances, as specifically set out in the second plea hereinafter pleaded, and which is hereto referred to for the purpose of the recitals of facts of purchase therein contained and for no other purpose, and for that purpose alone prayed to be taken as a part of this plea, if the court shall be of opinion that it is necessary for this defendant, in order to avail itself of the benefit of the decree, to set out its title and connection therewith in full, it acquired by purchase from the said Cape Girardeau and State Line railroad, the plaintiff in the aforementioned suit, all the right of way and roadway and property in the said decree mentioned or affected thereby, and it avers that this is the title and thereunder is held the sole use, possession, occupation, control, and enjoyment of said property by this defendant, as averred by the plaintiff in the 26th paragraph of his amended bill, and under which this defendant, while not a party to the aforesaid suit, claims the benefit of the decree therein rendered as aforesaid.

And therefore the said defendant doth plead the said decree in bar to all parts of the present amended bill which relate to this defendant, and to so much thereof as prays any discovery from or relief order or decree against it, and humbly prays the judgment of this honorable court whether it behooves it to make any other or further answer thereto than as aforesaid, and prays to be hence discharged with its reasonable costs and charges in this behalf most wrongfully sustained.

Second plea. And (leave of court having been first had to file the same) for another and further plea in this behalf to so much of the said amended bill as demands any relief against or any discovery from this defendant, this defendant says—

That about three years after the rendition of the said decree of date January 25th, 1878, as aforesaid, to wit, about August 1st, 1880, the said Cape Girardeau and State Line railroad, then claiming to be the owner of all the property in said decree included and affected, and being in full possession of the premises, in consideration of one dollar, and for other good and valuable considerations
80 to it paid by one Louis Houck, and particularly on the consideration of having a railroad built from the city of Cape Girardeau, Missouri, to some point on the St. Louis, Iron Mountain and Southern railroad which would connect the said city by rail with the rest of the world within a reasonable time, and in view of the fact that it had been unable to build or secure the building of any road, by a good and lawful deed duly executed and delivered by it, the said Cape Girardeau and State Line railroad, and of date August 1st, 1880, with assent of the stockholders thereof, did convey to said Louis Houck all its right of way and roadway, extending from the city of Cape Girardeau in a southwest direction, one hundred feet wide, throughout lots 19, 48, 49, 50, 64, 65, 63, of survey 2199, and 64, 65, and 66, of survey 2202, town. 30 N., R. 14

east, and also extending through townships 30 N., R. 13, towns. 29 N., R. 11 and 12, townships 28 N., R. 10 and 9, and township 27 N., R. 8 east, to section 8, in said township, the end of the grade and said right of way, together with all ties, bridges, culverts, &c., and 840 acres of real estate at the junction of said right of way with the St. Louis, Iron Mountain and Southern railway, and all of which estate and property is in said deed fully and particularly described, a duly certified copy of which said deed is herewith filed and prayed to be taken as part of this plea, all of which said property the said Cape Girardeau and State Line railroad, under the said decree aforesaid, had and claimed full power and authority to sell as the owner thereof, and had the actual possession.

That said Houck, in good faith and without any knowledge or notice whatever of any supposed right, title, claim, or interest of the complainant or any other bondholder in or to said property or of any part thereof, or of any incumbrance upon said property or any part thereof, and without any knowledge, notice, or information of any defect in said decree, paid said consideration and purchase price and agreed to and assumed the performance of the other considerations in said deed contained; that said Houck was then and is now a citizen of said city of Cape Girardeau, a large property-holder therein, as well as in said county, and had no connection whatever with
81 the said railroad further than that he was attorney for said Cape Girardeau & State Line railroad in obtaining said decree, until and save as by his said purchase he acquired said property; that said deed to him was duly recorded, on or about the date thereof, in the said county of Cape Girardeau, and the plaintiff had due notice thereof and of said purchase by said Houck.

That afterwards, on or about August 10th, 1880, this defendant, The Cape Girardeau Southwestern Railway Company, was duly incorporated and organized as a railroad corporation, in pursuance and by force of the General Statutes of the State of Missouri, under the corporate name of the Cape Girardeau Railway Company, having for its object the construction and operation of a railroad from the city of Cape Girardeau, Missouri, to Lakeville, in Stoddard county, Missouri, a distance of about 25 miles, and to connect with the St. Louis, Iron Mountain and Southern railway at a point about 15 miles southwest of said city of Cape Girardeau.

That said Louis Houck, then being the owner of said right of way and roadway and claiming the same, on or about August 19th, 1880, in consideration of the sum of 150,000 dollars to him paid by this defendant, by deed duly made, executed, and delivered, and of date August 19th, 1880, granted, bargained and sold, conveyed and confirmed unto this defendant, under its then corporate name of the Cape Girardeau Railway Company, the right of way, roadway, and all the property aforesaid, acquired by him as aforesaid from said Cape Girardeau and State Line railroad, from said city of Cape Girardeau to Delta, a distance of 15 miles, the particular description of which will be seen by reference to the deed therefor, herewith filed and prayed to be taken as part of this plea, this defendant

also assuming to build the road so contracted by said Houck as aforestated.

And this defendant, in perfect good faith and without any knowledge, notice, or information whatsoever of any fraud or irregularity in the obtaining of said decree, paid the monetary consideration aforesaid to said Houck on the date last aforesaid, and thereupon commenced the construction of its road between said termini over the right of way so purchased by it from said Houck, and
82 which had formerly belonged to said Cape Girardeau and State Line railroad, which right of way is the same right of way described in the amended bill of complaint in this cause, and which was described in the deed of trust in said amended bill set out, and which is described in the bill and decree aforesaid.

That within a reasonable time, to wit, within two years thereafter, in the execution of said contract between said Houck and said Cape Girardeau and State Line railroad, solely with its own means, this defendant built and completed its road from the west bank of the Mississippi river, in said city of Cape Girardeau, to said crossing of the said St. Louis, Iron Mountain and Southern railway, at the town or station of Delta, a distance of about 15 miles, and having constructed said road, with all necessary culverts, side tracts, bridges, depots, machine shops, turn-tables, and so forth, said railway company purchased locomotives and cars and commenced the operation of a railroad over said right of way, and it was the first and up, to this date, it is the only company or person which has operated a railroad into the city of Cape Girardeau.

That part of the money to build and equip said railroad to the said town of Delta, to wit, 100,000 dollars, was obtained by the sale of bonds issued September 1st, 1880, by said Cape Girardeau Railway Company, which were secured by a deed of trust executed by it on said date to Leo Doyle upon all its said property, as well as its franchises, which bonds mature on September 1st, A. D. 1900, and all of which were sold in open market, for value, to persons unknown to this defendant, and which were negotiable securities, and the proceeds of all of which said bonds were expended by said railroad company in building and equipping said road.

That afterwards, on the 19th of August, 1881, the said Louis Houck, then being the owner of the same, in consideration of 99,101 dollars, to him paid by this defendant, by deed duly made, executed, and delivered, and of date August 19th, 1881, granted, bargained and sold, conveyed and confirmed unto this defendant, under its then corporate name of the Cape Girardeau Railway Company, the right of way from Delta to Lakeville, a further dis-
83 tance of 10 miles, the particular description of which will be seen by reference to the deed therefor, herewith filed and prayed to be taken as part of this plea; that this defendant, in good faith and without any knowledge, notice, or information of any of the alleged fraud, irregularity, combination, or collusive agreement in and about the obtaining of said decree, then paid said consideration.

That afterwards, on, to wit, about September —, 1881, said Cape

Girardeau Railway Company, desiring to still further extend its road, built and equipped the same from its then terminus, at Delta, to Lakeville, in Stoddard county, Missouri, a further distance of about 10 miles, at a large expenditure of money, to wit, about 10,000 dollars per mile, and to obtain a greater part of said money issued its bonds, in the sum of 80,000 dollars, secured by a deed of trust upon said section of 10 miles, executed in favor of said Leo Doyle, as trustee, and sold said bonds on the open market, for value, out of the proceeds of the sale, whereof it in great part paid for said extension, expending the whole of them thereon.

That afterwards, on the — day of June, 1882, the name of the said Cape Girardeau Railway Company was duly and legally changed to that of Cape Girardeau Southwestern Railway Company and its articles of association were duly and legally amended, by which its line was extended from Lakeville, in Stoddard county, to the end of the roadway, as graded by the Cape Girardeau and State Line railroad, and thence, over a right of way to be acquired by this defendant, a further distance of 25 miles, making its total projected and authorized line a length of about 50 miles; that afterwards said Louis Houck, then being the owner thereof, in consideration of 250,000 dollars to him paid by it, conveyed to this defendant the right of way from Lakeville to the end of the grade and roadway, as acquired by him from said Cape Girardeau and State Line railroad, being to a point in section 8, township 27 N., range 9 east.

That defendant immediately entered upon the construction of that part of its extension from Lakeville, in Stoddard county, to the St. Francois river, in Wayne county, Missouri, a distance of 25 miles, and in order to raise part of the money to
84 enable it to make the said extension it issued its bonds in the sum of 200,000 dollars, and secured the same by a deed of trust in favor of the said Leo Doyle, as trustee, upon said 25 miles of extension, sold said bonds in the open market, for value, to various persons to it unknown, and applied all the proceeds thereof to the construction of said extension and the equipment of the road.

That it is now about to further construct and is constructing its said road from the St. Francois river westwardly to its terminus in this State and is operating it along its whole length.

That when this defendant took possession of the road-bed which its vendor and grantor, the said Louis Houck, had acquired and purchased from the said Cape Girardeau and State Line railroad the road-bed had become grown over with brush and trees, some of the latter being about 14 inches in diameter, the ties were rotten, the culverts washed away, the trestles worthless, and the so-called tracks, which were only about two miles long, mere streaks of rusty iron, disconnected, displaced, and worthless, nor was there any rolling stock at all, nor a station-house, machine shop, repair shop, or depot upon the whole line. All work had been abandoned on it about the year 1873, and from that time forward and until this defendant entered into the possession thereof no work whatever was done upon

it, and all the work done before that time had been done under the directions of the said Cape Girardeau and State Line railroad and out of the proceeds of public securities issued to it, and none of it, as defendant is informed and believes, by the said Illinois, Missouri and Texas Railway Company.

That in the course of constructing and equipping said road this defendant has paid out and expended a large sum of money, to wit, over 480,000 dollars.

And this defendant avers that the said purchase of the said roadway, lands, and appurtenances by it from said Houck, and the assumption and performance by it of the said contract between said Houck and said Cape Girardeau and State Line railroad, and its expenditure of large sums of money and contraction of large debts aforesaid, and its construction and equipment of said railroad were
85 all made and done by it in the most perfect good faith, for the consideration and on the contracts aforesaid, fully paid, entered into, and performed as aforesaid, and that at the time aforesaid it had no knowledge or notice whatever of any supposed right, title, claim, or interest of complainant or any other persons in or to said property or the proceeds or earnings thereof or any part thereof, or of any incumbrance whatsoever upon said property or any part thereof, or of any fraud, irregularity, defect, or imperfection of any kind in said decree or in the obtaining thereof.

That it made said payments and performed said contracts on the faith and credit of the decree aforesaid and in firm reliance on the validity thereof, and without any knowledge, notice, or information of any fraud in obtaining it; that all its acts and doings in the premises were open and notorious, known to all the world and to this complainant, and that this complainant, with full knowledge thereof, stood by and said nothing, neither did he make any claims nor give to this defendant any notice thereof, save and except by his bill filed in this case in this court on the 19th of August, 1885.

And this defendant avers that it thereby, in right of its said purchase from said Houck, who was assignee of said Cape Girardeau and State Line railroad, of all the property affected by the said decree of date January 25th, 1878, became and is entitled to the benefit of said decree.

And this defendant avers that it has not and that it never had any knowledge, notice, or information of any fraud in obtaining said decree nor any information thereof, save by this amended bill, neither did it or any one for it make any agreement or have any understanding or make any collusive agreement in respect thereto, nor did it have any notice or knowledge of any such agreement or understanding, but, on the contrary, it avers that the same was obtained without fraud of any kind.

And therefore this defendant also pleads and relies upon its said purchase and payment in good faith as aforesaid in bar to so much of the said amended bill as demands any relief against or any discovery from this defendant.

86 And humbly prays the judgment of this honorable court whether it behooves it to make any other or further answer

thereto than as aforesaid, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

Answer.—And the said defendant, The Cape Girardeau Southwestern Railway Company, not waiving its said pleas pleaded as aforesaid, but relying and insisting on the same, by way of answer fortifying said pleas and in support thereof and by way of answer to everything alleged in said amended bill to show that the said decree ought not to stand and be allowed as good and conclusive against this complainant and a valid and effectual bar against any relief as against this defendant, or any discovery, order, or decree as against this defendant, saith that said decree was and is a good, valid, and subsisting decree and binding upon this plaintiff, and was obtained without fraud or misrepresentation, concealment, or collusion, and that it was and is a valid and effectual and complete determination of all matters now sought to be opened by this amended bill; that the plaintiff in this present action is bound thereby, in that whatever claim he has to a lien upon the property described for the payment of the bonds alleged to be owned by him is derived under and through Frederick S. Winston, who, as trustee in the deed of trust, was a party thereto, and the right of this defendant to the benefit thereof is derived from the said Cape Girardeau railroad, who was also a party thereto.

And this defendant explicitly denies that said decree (wrongly called in the amended bill a judgment and erroneously there stated to have been rendered on or about March 30th, 1876, when in fact it was rendered January 25th, 1878), and which is the same decree set out in the plea first herein pleaded, was obtained by the Cape Girardeau and State Line railroad in fraud against the bondholders in the manner set out by complainant or in any fraudulent or unfair manner.

It denies that substituted services was made, in the suit in which it was rendered, on Frederick S. Winston in person and not as trustee.

87 It denies that said Frederick S. Winston appeared in said action in person only and not as trustee for the bondholders.

It denies that said Frederick S. Winston, by any agreement whatever, fraudulently or otherwise, with the said Cape Girardeau and State Line railroad or with any one for it, allowed said decree to be entered by default; it denies that said decree was entered by default; it denies that the appearance of the said Winston was in person; it denies that his answer was in his individual capacity; it denies that said Winston made no defense to said action as trustee; it denies that Louis Houck had any personal knowledge that said decree was obtained by any collusion whatsoever, and it denies that it was obtained by any collusion whatever or by any agreement between said Houck and said Winston or between any other persons.

As to what said Winston knew this defendant is not advised and has no knowledge or information thereof sufficient whereon to form any belief.

This defendant denies that said Houck took any advantage of any alleged neglect of said trustee in pursuance of any agreement, understanding, or collusion between him and said Winston or between him and any one else.

And this defendant denies any and all manner of fraud, covin, concealment, or deceit in the procuring of said decree, and it avers that said decree was obtained in perfect good faith, without fraud, covin, concealment, or deceit, without any collusion or agreement in fraud of the parties or any one else, and is in full force, unreversed, unappealed from, and in full effect.

All of which matters and things this defendant is ready to prove and maintain as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

GEO. D. REYNOLDS, *Of Counsel.*

[SEAL.] CAPE GIRARDEAU SOUTHWESTERN RAILWAY COMPANY,
By LOUIS HOUCK, *President.*

Attest: T. F. WHEELER, *Sec't'y.*

88 I certify that, in my opinion, the foregoing pleas are well founded in point of law.

GEO. D. REYNOLDS,
Of Counsel for the Defendant, Cape Girardeau Southwestern Railway Company.

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *ss:*

Louis Houck, being duly sworn, on his oath states that he is the president of the said defendant corporation, the said Cape Girardeau Southwestern Railway Company; that as such president he is now and ever since the incorporation thereof has been the managing officer thereof and in charge of its business; that he has read the above pleas of and the answer of said defendant, and that said pleas are not interposed for delay, and that they are true in point of fact, and that he makes this affidavit as the president of said defendant and on its behalf. He further says that he knows the seal of said defendant, and that the imprint above affixed is an impress of its corporate seal, and that the matters in said answer are true of his own knowledge except such matters as are therein stated on information & belief, & as to those matters he believes it to be true.

LOUIS HOUCK,
As Pres't C. G. S. W. R'way Co.

Subscribed and sworn to before me, in said district, this 29th day of January, 1886.

[SEAL.] FRANK E. BURROUGH,
Notary Public.

Commission expires Sept. 4, 1889.

Said plea and answer of the Cape Girardeau & State Line railroad is in words and figures following, to wit:

Plea & Answer of Cape Girardeau & State Line R. R.

89 UNITED STATES OF AMERICA, *Eastern District of Missouri,* } ss:

In the Circuit Court in and for said District. In Equity. No. 2549.

S. GRANVILLE BEALS, Plaintiff,
vs.
CAPE GIRARDEAU AND STATE LINE RAILROAD, Impleaded with Illinois, Missouri and Texas Railway Company *et al.*, Defendants.

The plea of Cape Girardeau and State Line railroad, one of the above-named defendants, to the amended bill of complaint of S. Granville Beals, plaintiff, in so far as it relates to this defendant, and the answer of said defendant in support of and fortifying said plea.

Plea.—This defendant, to all parts of said amended bill which relate to this defendant, and also to all the discovery thereby sought as against it and all relief asked against it in and by the said amended bill, *this defendant* doth plead in bar, and for such plea saith—

That heretofore, to wit, on or about the 30th day of March, 1876, this defendant, The Cape Girardeau and State Line railroad, commenced its action in the circuit court of Cape Girardeau county, Missouri, that being a court of general jurisdiction and possessed of full chancery powers, and the largest part of the real estate the title of which was to be affected by said action being then situate in said county, and the principal office and chief place of business of said company being by law and in fact located in said county, in the petition in which said action it was alleged and set out, among other things, that in the year 1869 the said Cape Girardeau and State Line railroad began the construction of a railroad from the city of Cape Girardeau to the State line of Arkansas in a southwesterly direction to the southern line of the State of Missouri in the county of Butler, in said last-mentioned State; that it acquired the right of way, surveyed, cut out, and graded a distance of thirty-nine miles of its roadway of its proposed railroad from the city of Cape Girardeau in said southwesterly direction through the counties of Cape Girardeau, Bollinger, and Stoddard, in the State of Missouri, and that the said right of way and roadway, starting from said city of
90 Cape Girardeau, was of a width of 100 feet, and that it constructed the bridges over and across the various streams intersecting its right of way and roadway, except the bridge across Castor river, and that it otherwise expended large sums of money and did great work on said right of way and roadway as aforesaid.

That all of said work aforesaid on said roadway was paid for by

the stockholders of said plaintiff and by no one else; that afterwards a proposition was made by Thomas C. Fletcher to the directory of said railroad to build its said road on said roadway in said southwesterly direction as aforesaid, and that he proposed to organize a new corporation to construct, build, and equip the railroad of said Cape Girardeau and State Line railroad.

That subsequent thereto the Illinois, Missouri and Texas Railway Company was organized by said Thos. C. Fletcher proposing to build the road of said plaintiff as contractor under the contract to be made by said T. C. Fletcher with said plaintiff.

That the proposition and terms of said T. C. Fletcher upon which it was proposed to build the road of the said plaintiff was pretended to be submitted to the stockholders of said plaintiff, but that the said stockholders' meeting was not legally and properly called nor proper notice given thereof, and that no legal meeting of the stockholders was held in that behalf.

That afterwards the then board of directors of the said plaintiff, illegally and without authority, made a different and other contract than that proposed by said T. C. Fletcher, providing that the property of said plaintiff should be conveyed to Geo. C. Thilenius and Henry T. Blow, as trustees; that said trustees should join in the execution of a mortgage of its property to secure certain bonds, and that the proceeds of the bonds should be used to build the road; and, further, that said contract provided that the said plaintiff should cease to exist and voluntarily disband as a corporation, and that all of these provisions of said contract were made and entered into by said then board of directors of said plaintiff without the consent or assent, expressed or implied, of the stockholders of the said plaintiff in that behalf and in fraud of the rights of said stockholders, and that at no time the stockholders of said
91 plaintiff authorized the conveyance of the property of said plaintiff to said G. C. Thilenius and H. T. Blow as aforesaid.

That at no time the stockholders of the said plaintiff authorized the then directors of said plaintiff to mortgage its road and franchises to secure the bonds of another corporation; that at no time the stockholders of said plaintiff authorized a contract to be made providing for the extinguishment and dissolution of said plaintiff's corporation, and that the action of said plaintiff's board of directors in that behalf was contrary to law, without power, and fraudulent.

That in pursuance of said contract, on the 6th day of April, 1871, the said board of directors authorized G. C. Thilenius, at that time president of said plaintiff, to convey, by deed to himself and Henry T. Blow, the right of way of said plaintiff as aforesaid, already described, and the rights, privileges, and appurtenances thereto belonging, all cross-ties and all lands, embracing 840 acres at the junction of said plaintiff's roadway with the St. Louis and Iron Mountain railroad; all tools, maps, furniture, and one hundred and eighty thousand dollars in bonds of the city and township of Cape Girardeau, to it paid for its stock, and that said property and effects, as aforesaid, was pretended to be conveyed and assigned to said G. C. Thilenius and H. T. Blow on the 2nd day of May, 1871.

That said trustees, G. C. Thilenius and H. T. Blow, joined in the execution of a deed of trust made and executed by the Illinois, Missouri and Texas Railway Company, on the property heretofore set out, to Frederick S. Winston and David Hoadly, as trustees; that said David Hoadly had since died, leaving said Frederick S. Winston, one of the defendants herein, sole surviving trustee; that said deed of trust was made and executed for the purpose of securing 1,500 bonds, of 1,000 dollars each, of said Illinois, Missouri and Texas Railway Company, and that said G. C. Thilenius and Henry T. Blow did not attach a seal to their said names, and that, so far as the said G. C. Thilenius and Henry T. Blow were concerned, the said deed of trust was not sealed by them; that the action of the board of directors of said plaintiff in authorizing said G. C. Thilenius and Henry T. Blow to sign said deed was illegal and fraud-
92 ulent; that by said deed of trust the bonds of the Illinois, Missouri and Texas Railway Company, numbering from one to 1,500, each for 1,000 dollars, payable in gold, pretended to be secured by said plaintiff; that said bonds pretended to refer to a contract between the said Cape Girardeau and State Line railroad and the said Illinois, Missouri and Texas Railway Company, but that the said bonds did not show any liability of plaintiff; that in said deed of trust the road-bed of plaintiff, together with right of way, depot grounds, and other lands, tracks, bridges, viaducts, culverts, and other structures, all the station-houses, outhouses, sheds, and other buildings and shops, and all machinery, tools, and all real estate of the said plaintiff, namely, 840 acres of land at the intersection of the St. Louis, Iron Mountain and Southern Railway and the said Cape Girardeau and State Line railroad, were pretended to be conveyed to said trustees, F. S. Winston and David Hoadly, to secure the said holders of the bonds of the Ill., Mo. and Texas Railway Company.

That on said 2nd day of May, 1871, the seal of said plaintiff was attached fraudulently to said deed of trust by its then secretary and the name of plaintiff signed thereto by its president, George C. Thilenius, without any authority having been given in that behalf by the directors of the said plaintiff, and without the consent of the stockholders, express or implied, and that at the time the said seal of said plaintiff was attached to said deed of trust and its name affixed by its president the legal title of said right of way, real estate, and other property described and set out was in the said G. C. Thilenius and Henry T. Blow, as trustees, and not in the said plaintiff.

That in December, 1871, the said Geo. C. Thilenius and Henry T. Blow, trustees as aforesaid, reconveyed to the said plaintiff the property to them conveyed by the conveyance heretofore mentioned, and that the said Geo. C. Thilenius and Henry T. Blow did not while the said real estate was in them convey or join in any conveyance, mortgage, or deed of trust legal and binding upon the said plaintiff.

That at the time said George C. Thilenius and Henry T. Blow reconveyed the said real estate aforesaid the said deed of trust afore-

said had not been filed for record or recorded in the proper
93 counties in which the same should have been recorded; that at said time and ever since the said Illinois, Missouri and Texas Railway Company and said Thomas C. Fletcher wholly failed to build said railroad of plaintiff, as contracted in that behalf, and that the same was as yet unfinished; that the contract made by the said plaintiff's board of directors and said T. C. Fletcher was rescinded, cancelled, and set aside by mutual consent on the 14th day of December, 1871; that at said time no bond of the Illinois, Missouri and Texas Railway Company secured by said deed of trust had been issued by it or its agents; that at said time notice was given in New York and London by said Thomas C. Fletcher notifying all persons not to purchase said bonds; that the said Illinois, Missouri and Texas Railway Company had since that time in some way issued said bonds, and that the same were then held by the defendants in said suit and other persons who are to the said plaintiff unknown, and that these holders by reason of the premises set up and claim right of title to the right of way, roadway, track, superstructure, franchises, appurtenances, land, and other property theretofore set out by the plaintiff.

That the said bonds of the said Illinois, Missouri and Texas Railway Company pretended to be secured by said deed of trust on the property of the said plaintiff were held by the defendants in said suit, but that they were not purchasers for value, but held them merely as collateral security, and that the holders of said bonds had not paid value for them, and that the said plaintiff was unable to state particularly the amount or number of the bonds held by each of the said defendants in that behalf.

That all of the holders of said bonds falsely and fraudulently pretended to be *bona fide* purchasers of said bonds for value and fraudulently pretended to have some right, title, and interest in the aforementioned property, estate, and franchises of the said plaintiff, and that by reason of these false and fraudulent pretences the plaintiff was greatly hindered and harassed in the completion and construction of its said railroad and otherwise greatly damaged.

That the deed of trust executed by said Illinois, Missouri
94 and Texas Railway Company, so far as the property, estate, and franchises of said plaintiff aforesaid is concerned, was null and void and fraudulent, and that the said board of directors of the plaintiff had no right or power to authorize the president of said plaintiff, as such president, to join in the execution of the same as security for the bonds to be issued by the Illinois, Missouri and Texas Railway Company, and that said George C. Thilenius had no authority to sign said deed, as president of said plaintiff, and that the secretary of said plaintiff had no authority to attach the seal of said plaintiff thereto; that the stockholders of plaintiff did not authorize the execution of said deed of trust to secure the bonds of the said Illinois, Missouri and Texas Railway Company, and that the charter and by-laws of the said plaintiff did not authorize it to mortgage its road, lands, right of way, and franchises to secure the bonds of another corporation, and that the laws of the State did not au-

thorize it, and that all and every of the holders of the said bonds of the Illinois, Missouri and Texas Railway Company had full, ample, and complete notice of all the facts in the case, in fact and in law, and that all pretences to the contrary in that behalf were fraudulent and covinous, and that the illegal acts and proceedings of the said plaintiff's directors and officers and the fraudulent pretences of the defendants in said suit had created a cloud upon the title of the said plaintiff, who was then and always had been in the quiet and peaceable possession of the premises therein set out.

That in and by said petition in said cause it was prayed that said mortgage, as well as the bonds purporting to be secured thereby, and the conveyance from said railroad to said Winston and Hoadly, as trustees, to secure the bonds of the I., M. and T. be declared fraudulent, and be cancelled, set aside, and be declared null, void, and of no effect as against said Cape Girardeau and State Line railroad, and no lien or charge upon its property, rights, and effects, as also for general relief, all of which will more fully appear by the petition in said cause, as the same is set out in a certified copy of the record thereof, prayed to be taken as a part of this plea, and which
95 will be produced on the hearing thereof, if production thereof is demanded; and this defendant avers that the deed of trust so sought to be cancelled, set aside, and vacated in and by said suit is the identical deed of trust or mortgage mentioned and set out by the plaintiff, S. Granville Beals, in this present suit in his amended bill of complaint herein, reference to which amended bill is hereby made for the particulars of said deed of trust; and this defendant further avers that in said action in said circuit court of Cape Girardeau county, Missouri, it, the said Cape Girardeau and State Line railroad, was the plaintiff and the Illinois, Missouri and Texas Railway Company, Frederick S. Winston, as sole surviving trustee in said deed of trust, and a large number of corporations and individuals claiming to be holders of bonds secured by said mortgage, as well as all other persons whose names were unknown, but who might claim to be holders of such bonds, were made defendants.

That the said Illinois, Missouri and Texas Railway Company was duly and actually served with process in said suit, as were also various other defendants claiming to be holders of bonds, and the said Frederick S. Winston, sole surviving trustee as aforesaid, as well as all the bondholders who could be named but who were non-residents, together with all unknown bondholders, were duly summoned and served with process by publication, as required by law.

That afterwards the said Illinois, Missouri and Texas Railway Company and the said Frederick S. Winston, as sole surviving trustee, as well as many bondholders, entered their appearance in said cause in said court and pleaded therein.

That afterwards, on the petition of said Frederick S. Winston, as sole surviving trustee and a defendant as such in said suit, and of William J. Alt, one of the holders of the bonds and also a defendant therein, and perhaps of others, said cause was attempted to be removed from the said circuit court of Cape Girardeau county into

the circuit court of the United States for the eastern district of Missouri, but that such proceedings were had in this last-named court in said cause that the same was remanded to the said circuit court of Cape Girardeau county, and said Illinois, Missouri and Texas Railway Company and said Winston, as sole surviving trus-
96 tee, and said William J. Alt, and other defendants, appeared and answered, denying all the allegations of the said petition, averring the validity of all of said contracts, deeds, and mortgage, and the lien of the latter and of the bonds secured thereby upon the said property, and putting all the allegations of plaintiff in its said petition set out in issue.

That thereupon said cause being at issue was afterwards proceeded with in said last-named court according to the usual and regular practice and course of proceedings in such cases provided, until the January term, 1878, of the said court, at which term said cause came on for hearing and trial according to the usual and orderly practice, and the same was heard and tried in due course and form of law, and on hearing and trial thereof said court, to wit, the circuit court of Cape Girardeau county, Missouri, during the said January term, 1878, on, to wit, the 25th day of January, 1878, being the 17th day of said term, rendered the following judgment and decree therein—that is to say:

STATE OF MISSOURI, } *ss:*
County of Cape Girardeau, }

In the Circuit Court of Cape Girardeau County. January Term, 1878.

FRIDAY, *January* 25, 1878—Seventeenth day.

THE CAPE GIRARDEAU AND STATE LINE RAILROAD, Plaintiff,
against
THE ILLINOIS, MISSOURI AND TEXAS RAILWAY, THE BANK OF NORTH America, Mercantile Bank, State Savings Institution, St. Louis Bridge and Construction Company, Springfield Iron Company; W. R. McKeen and D. W. Minshall, composing the firm of McKeen and Minshall; Thomas D. Price and —— ——, composing the firm of T. D. Price & Co.; William W. Mann, Frederick S. Winston, Andreas Holtz, Eli J. Crandall, W. K. Goodrich, William J. Alt, James McKaye, J. F. H. Trautman, and All Holders of Bonds of The Illinois, Missouri and Texas Railway Company who are unknown to this Plaintiff, and all of whom are made Defendants to this Petition, Defendants.

97 And this cause being now called for trial and hearing, the court finds that the Illinois, Missouri and Texas Railway Company, The Bank of North America, The Mercantile Bank, The State Savings Association, The St. Louis Bridge and Construction Company, Eli J. Crandall, W. K. Goodrich, Junior, and Thomas D. Price, have been duly served with personal process and notice of this action according to law, and that Frederick S. Winston, William W. Mann, Andreas Holtz, William J. Alt, James McKaye, J. F. H. Trautman,

The Springfield Iron Company, W. K. McKeen, Delos S. Minshall, and all the holders of bonds of the Illinois, Missouri and Texas Railway Company, who are to the plaintiff unknown, have been duly and legally served with process and notice of the cause of action herein by publication, in compliance with and conformity to the law and practice of the court; and further finds that the said Illinois, Missouri and Texas Railway Company, The State Savings Association, The St. Louis Bridge and Construction Company, Eli J. Crandall, W. K. Goodrich, Junior, Thomas D. Price, William J. Alt, J. F. H. Trautman, Andreas Holtz, W. R. McKeen, Delos S. Minshall, and Frederick S. Winston have appeared and pleaded and answered to the plaintiff's cause of action herein by their respective attorneys; and the court further finds that the Cape Girardeau and State Line railroad was duly and legally incorporated by the laws of the State of Missouri, and that the Illinois, Missouri and Texas Railway Company, The Bank of North America, The Mercantile Bank, The State Savings Association, The St. Louis Bridge and Construction Company, The Springfield Iron Company are corporations duly incorporated according to law.

And further finds that in the year 1869 the plaintiff began the construction of a railroad from the city of Cape Girardeau to the State line of Arkansas in a southwesterly direction to the southern line of the State of Missouri in the county of Butler, in said last-mentioned State; that plaintiff acquired the right of way, surveyed, cut out, and graded a distance of thirty-nine miles of its roadway of its proposed railroad from the city of Cape Girardeau, in said southwesterly direction, through the counties of Cape Girardeau, Bollinger, and Stoddard, in the State of Missouri, and that the said right of way and roadway, starting from said city of Cape Gi-
98 rardeau, is of a width of 100 feet, and the said plaintiff constructed the bridges over and across the various streams intersecting its right of way and roadway, except the bridge across Castor river, and that said plaintiff otherwise expended large sums of money and did great work on said right of way and roadway as aforesaid.

That all of said work aforesaid on said roadway was paid for by the stockholders of said plaintiff and by no one else; that afterwards — proposition was made by Thomas C. Fletcher to plaintiff's then directory to build its said railroad on said roadway in said southwesterly direction as aforesaid, and that he proposed to organize a new corporation to construct, build, and equip the railroad of plaintiff.

That subsequent thereto the Illinois, Missouri and Texas Railway Company was organized by said Thos. C. Fletcher proposing to build the road of plaintiff as constructor under the contract to be made of [by] said T. C. Fletcher with plaintiff.

That the proposition and terms of said T. C. Fletcher upon which it was proposed to build the road of plaintiff was pretended to be submitted to the stockholders of plaintiff, but that the said stockholders' meeting was not legally and properly called, nor proper

notice given thereof, and that no legal meeting of the stockholders was held in that behalf.

The court further finds that afterwards the then board of directors of the plaintiff illegally and without authority made a different and other contract than that proposed by said T. C. Fletcher providing that the property of plaintiff should be conveyed to Geo. C. Thilenius and Henry T. Blow as trustees; that said trustees should join in the execution of a mortgage to secure certain bonds, and that the proceeds of the bonds should be used to build the road; and, further, that said contract provided that the plaintiff should cease to exist and voluntarily disband as a corporation, and that all of these provisions of said contract were made and entered into by said then board of directors of plaintiff without the consent or assent, expressed as [or] implied, of the stockholders of the plaintiff in that behalf and in fraud of the rights of said stockholders, and that at no time the stockholders of plaintiff authorized the conveyance of the property of plaintiff to said G. C. Thilenius and
99 H. T. Blow as aforesaid.

That at no time the stockholders of the plaintiff authorized the then directors of plaintiff to mortgage its road and franchises to secure the bonds of another corporation; that at no time the stockholders of plaintiff authorized a contract to be made providing for the extinguishment and dissolution of plaintiff's said corporation, and that the action of plaintiff's said board of directors in that behalf was contrary to law, without power, and fraudulent.

The court further finds that, in pursuance of said contract, on the 6th day of April, 1871, the said board of directors authorized G. C. Thilenius, at that time president of plaintiff, to convey by deed to himself and Henry T. Blow the right of way of plaintiff, as aforesaid, already described, and the rights, privileges, and appurtenances thereto belonging, all cross-ties and all lands, embracing 840 acres at the junction of plaintiff's roadway with the St. Louis and Iron Mountain railroad; all tools, maps, furniture, and one hundred and eighty thousand dollars in bonds, and that said property and effects as aforesaid was pretended to be conveyed and assigned to said G. C. Thilenius and H. T. Blow on the 2nd day of May aforesaid, 1871.

And the court further finds that said trustees, G. C. Thilenius and H. T. Blow, joined in the execution of a deed of trust made and executed by the Illinois, Missouri and Texas Railway Company, on the property heretofore set out, to Frederick S. Winston and David Hoadly, as trustees, and that said David Hoadly has died, leaving said Frederick S. Winston, one of defendants herein, sole surviving trustee, and which said deed of trust was made and executed for the purpose of securing the 1,500 bonds of 1,000 dollars each of said Illinois, Missouri and Texas Railway Company, and that said G. C. Thilenius and Henry T. Blow did not attach a seal to their said names, and that, so far as the said G. C. Thilenius and Henry T. Blow are concerned, the said deed of trust is not sealed by them.

And the court further finds that the action of the board of directors of plaintiff in authorizing said G. C. Thilenius and Henry T.

Blow to sign said deed was illegal and fraudulent; and by said deed of trust the bonds of the Illinois, Missouri and Texas Railway
100 Company, numbering from one to 1,500, for 1,000 dollars, payable in gold, pretended to be secured by plaintiff; that said bonds pretend to refer to a contract between the Cape Girardeau and State Line railroad and the Illinois, Missouri and Texas Railway Company, but that the said bonds do not show any liability of plaintiff; and that in said deed of trust the road-bed of plaintiff, together with right of way, depot grounds, and other lands, tracks, bridges, viaducts, culverts, and other structures, all the station-houses, outhouses, sheds, and other buildings and shops, and all machinery, tools, and all real estate of the plaintiff, namely, 840 acres of land at the intersection of the St. Louis & Iron Mountain and Cape Girardeau and State Line railroad, pretended to be conveyed to said trustees, F. S. Winston and David Hoadly, to secure the said holders of the bonds of the Ill., Mo. and Texas Railway Company.

And the court further finds that on said 2nd day of May, 1871, the seal of plaintiff was attached fraudulently to said deed of trust, without any authority having been given in that behalf by the directors of the plaintiff, by the then secretary, and without the consent of the stockholders, express or implied, and that at the time the said seal of plaintiff was attached to said deed of trust the legal title to said right of way, real estate, and other property described and set out was in the said G. C. Thilenius and Henry T. Blow and not in the plaintiff.

The court further finds that in December, 1871, the said Geo. C. Thilenius and Henry T. Blow reconveyed to the plaintiff the property to them conveyed by the conveyance heretofore mentioned, and that the said Geo. C. Thilenius and Henry T. Blow did not, while the said real estate was in them, convey or join in any conveyance, mortgage, or deed of trust legal and binding upon the plaintiff.

And the court further finds that at the time the said George C. Thilenius and Henry T. Blow reconveyed the said real estate aforesaid the said deed of trust aforesaid had not been filed for record or recorded in the proper counties in which the same should have been recorded; that at said time and ever since the said Illinois, Missouri and Texas Railway Company and said Thomas C. Fletcher wholly failed to build said railroad of plaintiff as contracted in that be-
101 half, and that the same is as yet unfinished; that the contract made by the board of the plaintiff's directors and said T. C. Fletcher was rescinded, cancelled, and set aside by mutual consent on the 14th day of December, 1871, and at said time no bond of the Illinois, Missouri and Texas Railway Company secured by said deed of trust had been issued by it or its agents, and that at said time notice was given in New York and London notifying all persons not to purchase said bonds by said Thomas C. Fletcher; that the said Illinois, Missouri and Texas Railway Company has since that time in some way issued said bonds, and that the same are now held by defendants and other persons who are to the plaintiff unknown, and that these holders, by reason of the premises set up, claim right and

title to right of way, roadway, track, superstructure, franchises, appurtenances, land, and other property heretofore set out by the plaintiff.

And the court further finds that the said bonds of the said Illinois, Missouri and Texas Railway Company pretended to be secured by said deed of trust on the property of the plaintiff are held by defendants, who are not purchasers for value, but as collateral security, and that the holders of said bonds have not paid value for them, and that the plaintiff is unable to state particularly the amount or number of the bonds held by each of said defendants in that behalf; that all of the holders of said bonds now falsely and fraudulently pretend to be *bona fide* purchasers of said bonds for value and fraudulently pretend to have some right, title, and interest in the aforementioned property, estate, and franchises of the plaintiff, and that by reason of these false and fraudulent pretences the plaintiff is greatly hindered and harassed in the completion and construction of its said railroad and otherwise greatly damaged.

The court further finds that the deed of trust executed by said Illinois, Missouri and Texas Railway Company, so far as the property, estate, and franchises of plaintiff aforesaid is [are] concerned, is null and void and fraudulent, and that the said board of directors of the plaintiff had no right or power to authorize the president of plaintiff, as such president, to join in the execution of the same as security for the bonds to be issued by the Illinois, Missouri and Texas Railway
102 Company, and that said George C. Thilenius had no authority to sign said deed as president of plaintiff, and that the secretary of said plaintiff had no authority to attach the seal of the plaintiff thereto; that the stockholders of plaintiff did not authorize the execution of said deed of trust to secure the bonds of the said Illinois, Missouri and Texas Railway Company, and that the charter and by-laws of the plaintiff did not authorize it to mortgage its roads, lands, rights of way, and franchises to secure the bonds of another corporation, and that the laws of the State did not authorize it, and that all and every of the holders of the said bonds of the Illinois, Missouri and Texas Railway Company had full, ample, and complete notice of all the facts in the case, in fact and in law, and that all pretences to the contrary in that behalf are fraudulent and covinous, and that the illegal acts and proceedings of the plaintiff's directors and officers and the fraudulent pretences of the defendants have created a cloud upon the title of the plaintiffs, who are now and always have been in the quiet and peaceable possession of the premises herein set out, and that the several matters set up and out in the several answers herein filed by defendants constitute no defense to the plaintiff's rights and interests and confer no right and interest to or in the property of the plaintiff, as set out heretofore.

Wherefore, the premises considered, the court orders, adjudges, and decrees the said deed of trust executed by the Illinois, Missouri and Texas Railway Company, together with George C. Thilenius and Henry T. Blow, and also pretended to be executed by plaintiff, and which said deed of trust is in words and figures following:

(Here follows the deed of trust with the acknowledgments thereof and the certificate of record of the same in the office of the clerk and *ex officio* recorder of Cape Girardeau county as the same are set out and copied in the bill of complaint in this present cause, the same being omitted here from the copy of said decree for brevity, and after setting out said deed and acknowledgments and certificate said decree then proceeds as follows:) "Null, void, and fraudulent and of no effect as to the rights and property of the plaintiff herein and therein described, the Cape Girardeau and State Line railroad, and further adjudges, orders, and decrees that the said Frederick S. Winston, surviving trustee mentioned in said deed
103 of trust, his agents, attorneys, successors in office, and all others acting or pretending to act under or for him, be, and hereby are, perpetually restrained and enjoined from pleading and setting up said deed of trust as to this plaintiff, attempting to intermeddle, sell, dispose, or attempting to sell or dispose of the said roadway, superstructure, franchises, land, and other appurtenances appertaining to said plaintiff, either in New York or elsewhere, for the benefit, use, and behoof of said defendants—that is to say, The Illinois, Missouri and Texas Railway Company, the Bank of North America, Mercantile Bank, State Savings Institution, St. Louis Bridge and Construction Company, W. R. McKeen and D. W. Minshall, composing the firm of McKeen and Minshall; Thomas D. Price, William W. Mann, Frederick S. Winston, Andreas Holtz, Eli J. Crandall, W. K. Goodrich, William J. Alt, James McKaye, J. F. H. Trautman, and all the unknown holders of said bonds of the Illinois, Missouri and Texas Railway Company or their assignees; and further orders, adjudges, and decrees that the said defendants aforesaid have no right, title, or interest, by reason of being holders of said bonds, in the property of the plaintiff described in said deed of trust, being the property of the Cape Girardeau and State Line railroad, and that they and their heirs, administrators, executors, and assigns be perpetually enjoined and restrained from in anywise or manner interfering with the property and estate of plaintiff by reason of being holders of said bonds or any of them, and orders, decrees, and adjudges that each and every of said defendants, their heirs, administrators, and successors in office, be perpetually enjoined and restrained not to set up or assert any title to said estate in said deed of trust aforesaid described as against this plaintiff or its assigns, or to disturb or any further harass the said plaintiff, and that the plaintiff recover of and from the said defendants its costs in this behalf expended, and have hereof execution."

A duly certified copy of said decree is hereto annexed and filed and prayed to be taken as part of this plea, and all of which said proceedings are of record of the records of said court, as will more fully appear by a duly certified copy thereof, to be produced on the hearing of this plea should the same be required.

104 And this defendant avers that this decree is the same decree referred to in the 29th paragraph of the amended bill of complaint of the plaintiff and there incorrectly called a judgment,

and erroneously stated therein to have been obtained on or about the 30th day of March, 1876, instead of the 25th day of January, 1878.

And this defendant avers that said decree was obtained on due and legal service of process in the cause in which it was rendered as aforesaid upon the parties defendant as aforesaid, and was rendered after the appearance of the said parties defendant thereto on hearing and without any fraud, covin, or concealment of any kind whatsoever; that said Frederick S. Winston was made a party to said suit, as sole surviving trustee, and served with process therein as such; that he answered in said cause as such, and that as such trustee owning and holding the legal title to said property and representing all the bondholders purporting to be secured by the aforesaid deed of trust, he defended said suit, removed the same from the said circuit court of Cape Girardeau county to the circuit court of the United States in and for the eastern district of Missouri, from whence it was afterwards remanded back to said State court; that the said decree was obtained without any collusion between the party plaintiff therein and the defendants therein or their attorneys, and without any collusion whatever between the attorney who represented the plaintiff therein and the said Winston and upon the hearing of proofs; that it was obtained without any agreement or understanding of any kind whatever between the said Houck and said Winston.

And this defendant avers that by force of said decree the deed of trust now here sued on by the complainant in this suit, and set out and described by him in his amended bill of complaint, was cancelled, set aside, and declared null and void, and that all the property in said deed of trust included was thereby freed and discharged from the lien thereof.

And this defendant avers that the complainant, as well as all other holders of bonds secured or purporting to be secured by said deed of trust, held whatever right, lien, claim, or interest they had upon said property in said amended bill described through said
105 Winston and Hoadly and the survivor thereof, or the heirs and assigns of such survivor, and not otherwise, and that whatever claim or lien they have or had to said premises and property is and was through such trustee, and that they and each of them were represented in such suit by said Winston, as trustee, and are concluded thereby.

That said decree, rendered as aforesaid by said court on January 25th, 1878, has never been appealed from nor has any writ of error been sued out thereon, as may [might] have been done, under the laws of this State, at any time within 3 years from the rendition thereof, nor has the same been in any manner reversed, modified, set aside, or in any manner assailed by bill of review or otherwise, but from the rendition thereof hitherto has been and yet is in full force and effect.

That after the rendition of said decree duly certified copies of the same were duly recorded in the office of the recorder of deeds, where said deed of trust to said Winston and Hoadly had been recorded.

And therefore the said defendant doth plead the said decree in

bar to all parts of the present amended bill which relate to this defendant, and to so much thereof as prays any discovery from or relief order or decree against it, and humbly prays the judgment of this honorable court whether it behooves it to make any other or further answer thereto than as aforesaid, and prays to be hence discharged with its reasonable costs and charges in this behalf most wrongfully sustained.

Answer.—And the said defendant, The Cape Girardeau and State Line railroad, not waiving its said plea, pleaded as aforesaid, but relying and insisting on the same, by way of answer fortifying said plea, and in support thereof and by way of answer to everything alleged in said amended bill to show that the said decree ought not to stand and be allowed as good and conclusive against this complainant and a valid and effectual bar against any relief as against this defendant or any discovery order or decree as against this defendant saith that said decree was and is a good, valid, and subsisting decree and binding upon this plaintiff, and was obtained without fraud or misrepresentation, concealment, or collusion, and
106 that it was and is a valid and effectual and complete determination of all matters now sought to be opened by this amended bill; that the plaintiff in this present action is bound thereby, in that whatever claim he has to a lien upon the property described for the payment of the bonds alleged to be owned by him is derived under and through Frederick S. Winston, who, as trustee in the deed of trust, was a party thereto.

And this defendant explicitly denies that said decree (wrongly called in the amended bill a judgment and erroneously there stated to have been rendered on or about March 30th, 1876, when in fact it was rendered January 25th, 1878), and which is the same decree set out in the plea first herein pleaded, was obtained by the Cape Girardeau and State Line railroad in fraud against the bondholders in the manner set out by complainant or in any fraudulent or unfair manner.

It denies that substituted service was made, in the suit in which it was rendered, on Frederick S. Winston in person and not as trustee.

It denies that said Frederick S. Winston appeared in said action in person only and not as trustee for the bondholders.

It denies that said Frederick S. Winston, by any agreement whatever, fraudulently or otherwise, with the said Cape Girardeau and State Line railroad or with any one for it, allowed said decree to be entered by default; it denies that said decree was entered by default; it denies that the appearance of the said Winston was in person; it denies that his answer was in his individual capacity; it denies that said Winston made no defense to said action as trustee; it denies that Louis Houck had any personal knowledge that said decree was obtained by any collusion whatsoever, and it denies that it was obtained by any collusion whatever or by any agreement between said Houck and said Winston or between any other persons.

As to what said Winston knew this defendant is not advised and

has no knowledge or information thereof sufficient whereon to form any belief.

This defendant denies that said Houck took any advantage of any alleged neglect of said trustee in pursuance of any agreement, understanding, or collusion between him and said Winston or between him and any one else.

And this defendant denies any and all manner of fraud, covin,
107 concealment, or deceit in the procuring of said decree, and it avers that said decree was obtained in perfect good faith, without fraud, covin, concealment, or deceit, without any collusion or agreement in fraud of the parties or any one else, and is in full force, unreversed, unappealed from, and in full effect.

All of which matters and things this defendant is ready to prove and maintain as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

GEO. D. REYNOLDS,
Of Counsel for said Def't, The Cape Girardeau & State Line R. R.

I certify that, in my opinion, the plea of the said defendant above pleaded is well founded in point of law.

GEO. D. REYNOLDS,
Of Counsel for the Defendant, The Cape Girardeau and State Line Railroad.

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

S. S. Harris, being duly sworn, on his oath states that he was the last person elected as president of the defendant corporation, the said Cape Girardeau and State Line railroad, at the last meeting which said corporation held for the election of officers; that he has read the above plea and answer of said defendant and said plea is not interposed for delay, and that it is true in point and [of] fact, and that the matters and things in the answer set out are true, and that he makes this affidavit as the president of said defendant and for and on its behalf.

SAM'L S. HARRIS,
As Pres't Cape Girardeau and State Line Railroad.

Subscribed and sworn to before me, in said district, this 29th day of January, 1886.

[SEAL.] FRANK E. BURROUGH,
Notary Public.

Commission expires Sept. 4, 1889.

108 And there was also filed in said cause a plea of the Illinois, Missouri & Texas Railway Company in words and figures following, to wit:

Plea of Ill., Mo. & Texas R'y Co.

UNITED STATES OF AMERICA,
Eastern District of Missouri, } ss:

In the Circuit Court in and for said District.

S. GRANVILLE BEALS, Plaintiff,
vs.
ILLINOIS, MISSOURI AND TEXAS RAILWAY COMPANY *et al.*, Defendants. } In Equity.

The plea of The Illinois, Missouri and Texas Railway Company, one of the above-named defendants, to the bill of complaint of S. Granville Beals, plaintiff.

This defendant, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of said bill in so far as it relates to this defendant, and to so much and such parts thereof as prays any discovery from or any relief, order, or decree against this defendant, the said Illinois, Missouri and Texas Railway Company, saith—

That in the winter of the year 1873 or early in the year 1874 the said Illinois, Missouri and Texas Railway Company, having no means with which to prosecute the work of building and constructing the road, ceased all operation thereon.

That afterwards, about the 30th day of March, 1876, the Cape Girardeau and State Line railroad commenced its suit in the circuit court of Cape Girardeau county, Missouri, in which, among other things in the petition in said suit, it was alleged that the mortgage or deed of trust set out by this plaintiff in his bill in this cause was null, void, and fraudulent, and in which, among other things, it was prayed that the mortgage be set aside and cancelled.

That this defendant, The Illinois, Missouri and Texas Railway Company, was duly served with process in said suit, appeared thereto and answered, denying all the allegations in the petition therein.

109 That Frederick S. Winston, the surviving trustee in the said deed of trust (his cotrustee, David Hoadly, having died before that time), was also a defendant in said cause, was served with process therein, and appeared and answered.

That such proceedings were afterwards had in such cause that on the 25th of January, 1878, said court rendered a decree therein cancelling, setting aside, and annulling said deed of trust and enjoining this defendant, the said Illinois, Missouri and Texas Railway Company, from ever thereafter claiming or asserting any claim or ownership in or to the property in the deed of trust described. A duly certified copy of said decree is herewith filed and prayed to be taken as part of this plea.

That said decree has never been appealed from nor reversed or

modified, nor has any bill of review been ever exhibited against the same nor writ of error sued out thereon; that the same is still and always since has been in full force and effect.

That ever since the rendition of said decree this defendant has neither made any claim to the property in said deed of trust described, nor exercised any ownership thereover, nor has it ever operated, built, or constructed nor in any manner controlled the operation of any road over said property nor been in receipt of any rents, incomes, or profits of any kind whatever from the same, and this defendant pleads said decree and its abandonment of the said property under the terms of the injunction in said decree contained in bar of this action and in bar of all relief prayed for, and asks to be hence dismissed with its reasonable charges and costs in this behalf expended.

THO. C. FLETCHER,
Sol. for said Def't.

And afterwards, to wit, on the 1st day of March, A. D. 1886, there was filed in said cause a replication in words and figures following, to wit:

United States Circuit Court, Eastern District of Missouri.

110 S. GRANVILLE BEALS, Plaintiff,
vs.
ILLINOIS, MISSOURI AND TEXAS RAILROAD COMPANY, Cape Girardeau and State Line Railroad; George C. Thilenius and Henry T. Blow, Trustees, &c.; Thomas C. Fletcher and Cape Girardeau Southwestern Railway, Defendants. } In Equity.

Replication.

The replication of S. Granville Beals, complainant, to the answer and answers to his amended bill of complaint of the Illinois, Missouri and Texas Railway Company, Gape Girardeau and State Line railroad, and Cape Girardeau Southwestern railway, defendants.

This repliant, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and of advantage of exception which may be had or taken to the manifold insufficiencies of the said answers, for replication thereto denies each and every allegation therein contained, and saith that complainant will aver, maintain, and prove his said bill of complaint and amended bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in all the said answers contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and conceded, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and

humbly prays as in and by his said bill of complaint and amended bill of complaint he has already prayed.

Dated New York, February 25th, 1886.

HENRY H. DENISON,
Solicitor for Complainant.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

S. Granville Beals, being first duly sworn, deposes and says that he is the complainant in the above-entitled action, and has read the foregoing replication and knows the contents thereof; that
111 the same is true to the knowledge of deponent, except as to the matters that are therein stated to be alleged on information and belief, and that as to these matters he believes it to be true.

S. G. BEALS.

Sworn to before me this 25 day of February, 1886.

[SEAL.] GEO. R. CARRINGTON,
Notary Public (137), *City & County of New York.*

And afterwards, to wit, on the 15th day of March, A. D. 1886, the following, among other, proceedings were had and appeared of record in said court, to wit:

Motions for Judgment Filed.

S. GRANVILLE BEALS, Complainant,
vs.
ILLINOIS, MISSOURI & TEXAS R. R. Co. *et. al.*, Defendants. } 2549.

Now come the defendants, The Cape Girardeau & State Line railroad and The Cape Girardeau Southwestern Railway Company, and file their motions for judgment on their pleas herein.

Said motion is in words and figures following, to wit:

Motion for Judgment.

U. S. Circuit Court. March Term, 1886.

S. GRANVILLE BEALS
vs.
ILLS., MO. & TEXAS R. R., CAPE GIRARDEAU & STATE LINE R. R. *et. al.*

The defendants, The Cape Girardeau & State Line R. R. and The Cape Girardeau Southwestern R'way Co., move the court for judgment on the pleas and replications in this cause for the reason that the plaintiff has not taken issue on the said pleas, nor is the alleged replication thereto any reply in law.

And these defendants ask for judgment on the said pleas dismissing the bill.

GEO. D. REYNOLDS,
Of Counsel for Def'ts.

And afterwards, to wit, on the 31st day of March, A. D.
112 1886, the following further proceedings were had and appear of record in said cause, to wit:

Case Heard & Submitted.

S. GRANVILLE BEALS, Complainant,
vs.
ILLINOIS, MISSOURI & TEXAS R'Y Co. *et al.*, Defendants. } 2549.

This cause came on to be heard on this day and was argued by counsel and submitted.

And afterwards, to wit, on the 15th day of April, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

Demurrers Withdrawn.

S. GRANVILLE BEALS, Complainant,
vs.
ILLINOIS, MISSOURI & TEXAS R'Y Co. *et al.*, Defendants. } 2549.

Now come defendants, Fletcher and Thilenius, and by consent withdraw their demurrers herein *nunc pro tunc* as of March 31st, 1886.

And on the same day, to wit, the 15th day of April, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

Decree.

S. GRANVILLE BEALS, Complainant,
vs.
ILLINOIS, MISSOURI & TEXAS R'Y Co. *et al.*, Defendants. } 2549.

This cause came on to be heard at this term upon the bill, pleas, answer, and replication, and was argued by counsel and submitted.
And the court, now being fully advised in the premises, finds the equities for the respondent.
It is therefore now ordered, adjudged, and decreed as follows, to wit: That complainant's said bill of complaint be and it is dismissed with costs.

And afterwards, to wit, on the 16th day of April, A. D. 1886, the following further proceedings were had and appear of record
113 in said cause, to wit:

Appeal Allowed.

S. GRANVILLE BEALS, Complainant,
vs.
ILLINOIS, MISSOURI & TEXAS R'Y Co. *et al.*, Defendants. } 2549.

On complainant's motion, an appeal to the Supreme Court of the United States is allowed, with leave to file appeal bond in the sum of five hundred dollars within twenty days.

And afterwards, to wit, on the 31st day of May, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

Appeal Bond Approved.

S. GRANVILLE BEALS, Complainant,
vs.
ILLINOIS, MISSOURI & TEXAS R. R. Co. *et al.*, Defendants. } 2549.

Now comes the complainant and presents his appeal bond in the sum of five hundred dollars, which is approved and by leave of court filed as part of the record herein.

Said appeal bond is in words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, S. Granville Beals, as principal, and D. Crawford and Dan. C. Nugent, sureties, are held and firmly bound unto The Illinois, Missouri and Texas Railway Company, The Cape Girardeau & State Line railroad, The Cape Girardeau Southwestern Railway Company, George C. Thilenius, and Thomas C. Fletcher in the full and just sum of five hundred dollars, to be paid to the said Illinois, Missouri and Texas Railway Company, The Cape Girardeau & State Line railroad, The Cape Girardeau, Southwestern Railway Company, George C. Thilenius, and Thomas C. Fletcher, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-eighth day of May, in the year of our Lord one thousand eight hundred and eighty-six.

114 Whereas lately, at the March term, 1886, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between S. Granville Beals, plaintiff, and The Illinois, Missouri & Texas Railway Company, The Cape Girardeau & State Line railroad, The Cape Girardeau Southwestern Railway Company, George C. Thilenius, & Thomas C. Fletcher, defendants, a decree was rendered against the said S. Granville Beals, and the said S. Granville Beals having obtained an appeal of the

said court to reverse the said decree in the aforesaid suit, and a citation directed to the said Illinois, Missouri & Texas Railway Company, The Cape Girardeau & State Line railroad, The Cape Girardeau Southwestern Railway Company, George C. Thilenius, and Thomas C. Fletcher, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such that if the said S. Granville Beals shall prosecute said appeal to effect and answer all damages and costs if he shall fail to make good his said plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

S. G. BEALS. [SEAL.]
D. CRAWFORD. [SEAL.]
DAN. C. NUGENT. [SEAL.]

Approved by—
SAMUEL TREAT, *Judge.*

Upon the hearing of said cause the following opinion was delivered by Samuel Treat, judge, to wit:

Opinion.

In the Circuit Court of the United States for the Eastern District of Missouri. April 15, 1886.

S. GRANVILLE BEALS
vs.
ILLINOIS, MISSOURI & TEXAS RAILROAD CO. } No. 2549.

Opinion of the court.

TREAT, *J.* (orally):

I do not propose this morning to go through a detailed con-
115 sideration of the record in this case. It suffices that the second railroad corporation, which was the successor of the first railroad corporation, issued bonds. The subject-matter of the validity of those bonds was fully heard in a court of competent jurisdiction and the bonds were pronounced void. Now, here is an attempt to charge the successor of the second corporation with those bonds, which have already been pronounced invalid, without any allegations that would enable the court to fasten on the third corporation void obligations. I cannot understand the theory of the bill to be within any rule of law or equity, and it suffices that the state of the record shows that there is nothing to charge these parties defendants with any of those obligations. The decree of the court will be that the bill be dimissed with costs.

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record, pleadings, and proceedings in case No. 2549, of S. Granville Beals, complainant, against The Illinois, Missouri and Texas Railway Company *et al.*, respondents, as fully as the same remain on file and of record in said case in my office.

Seal of the United States Circuit Court, Eastern District of Missouri.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 15th day of September, in the year of our Lord eighteen hundred and eighty-six.

A. P. SELBY,
Clerk of said Court.

Endorsed on cover: E. Missouri C. C. U. S. No. 385. S. Granville Beals, appellant, *vs.* The Illinois, Missouri and Texas Railroad Company *et al.* Filed October 2, 1886.

Office Supreme Court U. S.
FILED
JAN 6 1890
JAMES H. McKENNEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

NO. III.

S. GRANVILLE BEALS,

Appellant,

vs.

THE ILLINOIS, MISSOURI AND TEXAS RAILROAD COMPANY et al.

Brief and Argument for Appellant and Plaintiff in Error.

HENRY H. DENNISON,
Solicitor for Plaintiff in Error,
517 Chestnut St., St. Louis, Wis.

A. G. VANDERPOEL,
Counsel for Plaintiff in Error,
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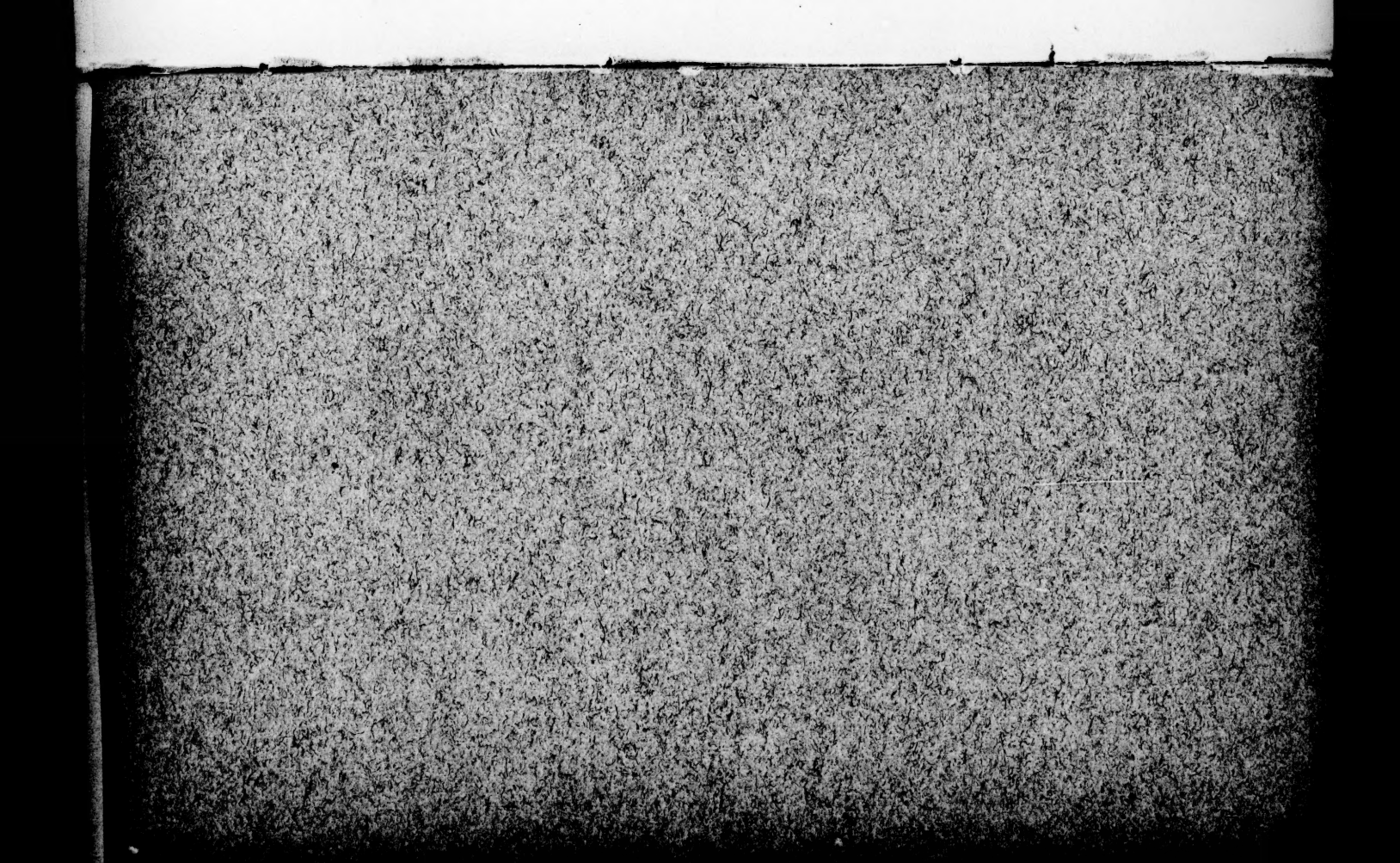

Supreme Court of the United States.

OCTOBER TERM, 1889, NO. 111.

S. GRANVILLE BEALS,
Plaintiff in Error and Appellant,

vs.

THE ILLINOIS, MISSOURI AND TEXAS RAILROAD COMPANY *et al.*,
Respondents and Appellees.

ARGUMENT, BRIEF AND POINTS FOR PLAINTIFF IN ERROR AND APPELLANT.

Statement of Facts of Case.

The plaintiff and appellant herein is a citizen and resident of the city and State of New York (p. 1, fol. 1, Transcript of Record), and the defendants and respondents are all citizens of said State of Missouri (p. 1, f. 2).

The "Cape Girardeau and State Line R. R." being unable to construct and equip their road entered into an agreement with Thomas C. Fletcher, the result of which was to be the organization of the "Illinois, Missouri & Texas R. R." The issuing

by the last named road of certain mortgage bonds, which were to be secured by certain deeds of trust, etc., bonds to be sold, proceeds to be applied towards construction, etc., of a railroad on the route belonging to the "Cape Girardeau & State Line R. R." Bonds now in suit were issued and sold and applied to the construction and equipment of said road; the "Cape Girardeau and State Line R. R." instituted a suit in the Supreme Court of the State of Missouri for the cancellation of said bonds, claiming they were issued in fraud, etc. Substituted service is claimed to have been made by publication and service upon Frederic S. Winston, sole surviving trustee for said bondholders and the judgment obtained by plaintiff, "Cape Girardeau & State Line R. R." set up in bar to this plaintiff's cause of action on sixty-eight (68) 1st mortgage bonds of the "Illinois, Texas & Missouri R. R." to recover the principal and interest due thereon. The plaintiff in error alleges and claims that the suit resulting in the judgment set up in bar was obtained by fraud and collusion between the trustee, Frederic S. Winston and Houck, the attorney for, and by the plaintiff's themselves, and that the fraud so practiced was taken advantage of by the plaintiff in such suit by Houck, their attorney, and by Frederic S. Winston, in violation of his duties to plaintiff herein and other bondholders. The fraud complained of is, that the summons and complaint in the suit, set up in bar, were served on Frederic S. Winston "INDIVIDUALLY" and not as "TRUSTEE," and Winston appeared INDIVIDUALLY ONLY in said suit, and then said Winston allowed judgment to be entered by default, pursuant to an agreement between Winston and Houck (plaintiff's attorney in said suit), and Winston failed to notify the bondholders represented by him of his default, and that Winston knew that the petition (or complaint) in said suit had no foundation in fact, was wholly fictitious and false as to the facts therein alleged as foundation for relief asked therein, and

Houck had personal knowledge of Winston's default therein and took advantage thereof for himself and his client, said Houck purchasing property (covered by bonds in this action) under said decree for ONE DOLLAR.

Said Houck purchasing property [covered by bonds in this suit] under said decree for ONE DOLLAR, and HOUCK ORGANIZED the "Cape Girardeau and S. W. R. R." and became its "PRESIDENT" and "GENERAL MANAGER," and then Houck sold to it for the sum of $499,101 (FOUR HUNDRED AND NINETY-NINE THOUSAND ONE HUNDRED AND ONE DOLLARS) the said property which Houck had purchased for ONE DOLLAR. The "Cape Girardeau & S. W. R. R." are still, under said purchase, the holders of said property, and one of the defendants herein.

Questions at Issue.

I.

Did the knowledge of the facts acquired by Houck, as attorney for the "Cape Girardeau and State L. R. R. Co.," remain with Houck individually, as president of the "Cape Girardeau and South West R. R."?

II.

Did such knowledge prevent Houck from selling the "Cape Girardeau and South West R. R. Co.," as innocent and *bona fide* purchasers, the property he, Houck, purchased under the decree of the State Court of Missouri, set up in bar herein?

III.

In case the decree in the State Court was obtained by extrinsic and collateral frauds, will the Federal Circuit Court allow said decree to constitute a bar against the judgment of the Federal Court in favor of the parties chargeable with notice of such fraud, against plaintiff, an innocent bondholder for value?

Procedure.

(1.) Amended bill for "foreclosure and sale," dated December 23, 1885, cited Jan. 2, 1886 (pp. 1–31, ff. 1–59).

(2.) Demurrer of defts. Thilenius and Fletcher, Feb. 1, 1886 (p. 31, f. 59).

(3.) Separate pleas and answers to amended bill of complaint (p. 32, f. 59).

(4.) Demurrer of Fletcher (p. 32, ff. 59, 60).

(5.) Demurrer of Thilenius (p. 33, ff. 60, 61.)

(6.) Pleas and answer of "Cape G. and Southwestern R. R." (pp. 34-52, ff. 62–88).

(7.) Pleas and answer of Cape Girardeau and State Line R. R. (pp. 53–66, ff. 89–108).

(8.) Plea of Illinois, Texas & M. R. R. (pp. 67, 68, ff. 108–110).

(9.) Plaintiff's replication (pp. 68, 69, ff. 110, 111).

(10.) Motion for judgment on pleas and replication by [*a*] "Cape G. & S. W. R. R." and [*b*] "Cape G. & St. L. R. R." (p. 69, f. 111).

(12.) Case heard and submitted (p. 70, f. 112).

(13.) April 15, 1886, demurrers withdrawn by Fletcher and Thilenius *nunc pro tunc* as of March 31, 1886 (p. 70, f. 112).

(14.) Decree (p. 70, f. 112).

(15.) Appeal allowed (p. 71, f. 113).

(16.) Appeal bond approved (p. 71, f. 113).

(17.) Appeal bond (p. 71, ff. 113–114).

(18.) Opinion of Court (p. 72, f. 115).

Assignments of Error.

(*a*) Decree (p. 70, f. 12–13) is erroneous for the reason that the Court finds the equities for the respondent, when it is submitted that the equities are in favor of the plaintiff and appellant.

(*b*) Opinion (p. 72, f. 115) is erroneous, it is submitted, for the reason that opinion finds "the "subject matter of the validity of those bonds "was fully heard in a court of competent juris- "diction and the bonds were pronounced void."

(*c*) Opinion also finds: "Now here is an attempt "to charge the successor of the second corpor- "ation with those bonds, which have already "been pronounced invalid without any allega- "tions which would enable the court to fasten "on the third corporation void obligations."

(*d*) Opinion further finds: "I cannot understand "the theory of the bill to be within any rule of "law or equity and it suffices that the state of "the record shows that there is nothing to "charge these parties defendants with any of "those obligations.

"The decree of the Court will be that the bill "be dismissed with costs" (p. 72, f. 115).

The opinion, it is submitted, shows the erroneous conception of the theory of plaintiff's "bill," held by the learned Court and which induced the signing of the decree containing the error assigned. We pass to the examination of the facts on which the opinion is predicated.

I.

The cardinal and controlling fact is that of Houck's knowledge of fact and facts acquired as

attorney, known as an individual, prior to his originating, organizing and incorporating and becoming president of the "Cape Girardeau & S. W. R. R.," one of the defendants herein, and now present owner and holder of the property covered by plaintiff's bonds herein; every one of which facts is so leprously permeated with fraud as to carry notice to defendant, "Cape Girardeau & S. W. R. R.," and to prevent it from being thereafter an innocent purchaser, possessor, holder or owner of the property covered by plaintiff's bonds herein from said Houck, under the following circumstances:

(*a*) Houck was attorney of "Cape Girardeau and State Line R. R." at the time and in the decree set up in bar. It is alleged in the "bill" that Houck fraudulently conspired with the trustee for the bondholders, fabricated and formulated a petition to the Supreme Court of the State of Missouri, having for its object the surrender and cancellation of the bonds in question (and now held by plaintiff), all of which facts, stated in said petition, were known to Houck to be wholly fictitious, wholly false, and with no foundation in fact or law (for Facts and Petition, etc., see Transcript of Record, p. 27, f. 50–53; p. 40, f. 71–72; p. 41, f. 73; p. 42, f. 74; p. 43, f. 75–76; p. 44; p. 45, f. 78).

(*b*) Houck, as attorney for "Cape G. & State Line R. R.," had personal knowledge that Winston & Hoadley, the trustees, had disposed of the bonds in question, with others, to innocent holders for value, before maturity and without notice, residents of other States than Missouri, and that Fred S. Winston was to represent them as trustee (pp. 27, 28, f. 50, 51, 52).

(*c*) Houck had personal knowledge of the fact that he, Houck, caused said Winston, trustee, to fail to put in an answer as trustee against the

bill and petition in Missouri Supreme Court and to fail to defend against same, as was his duty (pp. 27. 28, f. 50, 51).

(*d*) Houck, as said attorney, knew that Winston had personal knowledge of the false and fictitious nature of each fact in the bill and petition in said Missouri Court (pp. 27, 28, f. 50, 51, 52).

(*e*) Houck, as attorney, knew that he, Houck, personally conspired with said Winston, as trustee in said Missouri suit, to have Winston fail to put in his answer therein, as said Houck knew was Winston's duty to do as trustee for said bondholders (pp. 27, 28, f. 50, 51, 52).

(*f*) Houck, as attorney, knew that he, Houck, caused Winston, as trustee, to put in his answer only as a personal bondholder and to fail to put in an answer as trustee for bondholders (pp. 27, 28, f. 50, 51, 52).

(*g*) Houck knew, as attorney, of his own knowledge that Winston, said trustee, while trustee for said bondholders, denied each and every allegation in petition in the State Court for cancellation of said bonds (p. 27, f. 50, 51, 52).

(*h*) Houck, as attorney, knew of his own knowledge that the decree of January 25, 1878, set up (pp. 58–64, f. 96–106) in the Circuit Court, Cape Girardeau County, Missouri, "Cape Girardeau & St. Line R. R., plaintiff, *vs.* The Illinois, Missouri & Texas R. R. *et al.*," was obtained by default, and that no evidence, oral or documentary, was submitted to the Court, and that he, Houck, in fact was attorney of plaintiff (pp. 27, 28, f. 50–53).

(*i*) Houck knew, as attorney in such procedure, that pursuant to an agreement between him,

Houck, and said Winston, trustee for bondholders, that Winston had allowed him, Houck, to obtain by default from Supreme Court of Missouri, on a petition which was wholly false and fictitious as to every allegation of fact and of law therein contained, and that he, said Winston, as trustee for said bondholders, had wholly refrained and failed to give said bondholders any notice of his direliction in duty as trustee, or of the results flowing therefrom (p. 28, f. 52).

(*j*) Houck, as attorney, took advantage of all direlictions in duty of trustee towards his bondholders, when he, Houck, knew that trustee Winston was acting so fraudulently and neglectfully of his legal duties toward said bondholders pursuant to a wicked and collusive agreement between him, Houck, as attorney, and W inston as trustee (p. 28, fol. 52).

(*k*) That substituted service was made on Frederick S. Winston, the only surviving Trustee as Frederick S. Winston, in person and not as Trustee to Houcks personal knowledge as attorney.

Memorandum:

Whenever "*Houck*" is called "Attorney" heretofore or hereafter, is always meant "Houck, as attorney for the Cape Girardeau and State Line R. R.," which ended in the proceedings and decree of January 25, 1878, set up in bar to this action.

II.

The following facts, it is respectfully submitted, prove legal notice to Houck of such facts as prevent him from ever having been an innocent purchaser of any property belonging to the "Cape Girardeau & State Line R. R"

(*a*) It appears (p. 46, f. 80) that in 1880, August 1st, the "Cape Girardeau and State Line R. R." pretended to convey to said Houck all the property restored to it by the decree of the Supreme Court of the State of Missouri, January 25, 1878, which was obtained in the sinful and fraudulent manner heretofore set forth, for and in consideration of the sum of *one dollar*, and that he, Houck, *built* a railroad from Cape Girardeau City to the Iron Mountain Railroad, and that said Houck claims to have paid said consideration of one dollar thereof, and that it is admitted (p. 47, f. 81) that said Houck was attorney for plaintiff, "Cape Girardeau and State Line R. R.," in obtaining a decree of January 25, 1878, set up in bar herein by defendants (pp. 46–47, f. 80–81; pp. 26, 27, 28, f. 50–52).

III.

The following facts prove conclusively such notice and knowledge on the part of the "Cape Girardeau and S. W R. R." as to preventing it from having been an innocent and honest purchaser of any of the property, real or personal, from Houck, which was covered by the decree of the Supreme Court of Missouri, January 25, 1878, and claimed to have been sold to Houck on August 1st, 1880, for *one dollar*, by the "Cape Girardeau and State Line R. R., and which said property was covered by the bonds now in question (pp. 46–47, f. 80–81).

(*a*) The "Cape Girardeau and S. W. R. R.," the *present pretended holder* and owner of the property covered by these bonds now in question, was organized *August 10, 1880*, to run to certain points, covered in whole or in part, by the charter of the "Cape Girardeau and State Line R. R." (pp. 46–47, f. 80–82).

(*b*) That on *August 19, 1880, Houck*, claiming and pretending to be the *owner* of the "*right of way*" and "the roadway" covered by the bonds now in question, *sold* the same to the "*Cape Girardeau & S. W. R. R.*" for **$150,000** (p. 47, fols. 80 and 81).

(*b*^{11}) That on *August 19, 1881*, said Houck made another sale to the "Cape Girardeau & S. W. R. R." of another portion of the property covered by these bonds in question, and falsely claimed to have been honestly purchased by him from the "Cape Girardeau & St. L. R. R." under decree of January 25, 1878, and received $99,101 from the "Cape Girardeau & S. W. R. R." therefor (pp. 48–50, fols. 83–85).

(*b*^{111}) That June, 1882, said Houck sold to the "Cape Girardeau & S. W. R. R." another segment or section of the property, real and personal, covered by the bonds now in question, and which he, Houck, fraudulently pretented to have honestly acquired under the decree of *January 25, 1878*, from the "*Cape Girardeau & St. L. R. R.*" and on this last sale or pretended sale, Houck admits and defendant "*Cape Girardeau & S. W. R. R.*" pretends to have paid him therefor the sum of **$250,000 additional** (p. 49, fol. 83).

(*c*) That, as a fact, Houck, on his own admissions, claims to have received **$499,101** for the sum of **$1** paid to the "Cape Girardeau & St. L. R. R." under the decree of January 25, 1878, set up in bar herein and covered by the bonds in question from the "Cape Girardeau & S. W. R. R." while Houck was PRESIDENT AND MANAGING OFFICER thereof IN CHARGE OF ITS BUSINESS (pp. 48, 49, fols. 83, 84); (p. 52, fol. 88 presents HOUCK'S PERSONAL AFFIDAVIT to the facts of his official position as PRESIDENT

and as MANAGING OFFICER, etc.; also Houck states explicitly his personal knowledge thereof).

IV.

That substituted service was made on Frederic S. Winston, the only surviving trustee, as Frederic S. Winston in person and not as trustee (p. 27, fol. 27).

Law Points.

I.

Notice to agent is notice to principal.

"The knowledge of the agent in the transaction of his business as agent is the knowledge of the principal."

Sias *v.* Roger Williams Ins. Co., 8 Fed. R., p. 186.

"Judge Story admits that if the knowledge was acquired by said agent so near the transaction that the agent must be presumed to recollect it, the principal is affected by that knowledge."

U. S. *v.* Two Hundred and Seventy-eight Barrels of Distilled Spirits, 3 Clifford's Rept.

"The facts brought to the knowledge of their attorney in his inquiries respecting the note and the authority of Benjamin T. Renick to pledge it, are considered in law as brought to their knowledge. Information to him of all essential matter affecting the subject he was investigating was in law information to them, and action must be adjudged accordingly. The law, indeed, goes much further than

this; it considers the principal as affected with notice of all facts, notice of which can be charged upon the attorney." "Here the attorney examined the will of Thomas T. Renick; he knew that the note in question was held by Benjamin T. Renick, in his character as executor of Thomas' estate, and not in his own right; the agreement referred to in its indorsements of extension of payment made him acquainted with that fact. It stipulated not to press for payment of the note until the money was required for the settlement of that estate; and he was informed beforehand that the money to be borrowed on the pledge of the note in question as security was to be used in the business of B. T. Renick & Co."

"The bank of West Borro had no attorney of its own in the transaction. It relied upon the representation of the attorney of B. T. Renick & Co.; employed to negotiate the loan. He informed the bank, however, of all facts essential to its knowledge or acquainted it with such matters upon inquiry would have given the information. It knew that the note was held by B. T. Renick, as assets of Thomas T. Renick's estate, and not in his own right; it was so informed by the attorney, the endorsement on the note declared the fact also, and the agreement to which the endorsement referred and to which its attention was called would have removed all doubt on the subject, if any could have existed. It must be presumed to have known what it could have thus easily have ascertained; and dealing with an executor exercising his power in the deposition of the personal assets of an estate in his hands, ostensibly to raise money not for the estate or the settlement of its affairs, but for the business of a commercial firm, it was bound to look into his authority to make such a disposition of them, and is held to a knowledge of all the limitations which the will as well as the law puts upon his power. There is no doubt that, unless sustained by statute, an executor can

dispose of the personal assets of his testator by sale or pledge for all purposes connected with the discharge of his duties under the will. And even where the sale or pledge is made for other purposes, of which the purchaser or pledgee has no knowledge or notice, but takes the property in good faith, the transaction will be sustained for the purchaser or pledgee is not bound to see to the disposition of the proceeds received. But the case is otherwise where the purchaser or pledgee has knowledge of the perversion of the property to other purposes than those of the estate, or the intended perversion of the proceeds. The executor, though holding the title to the personal assets, is not absolute owner of them. They are not liable for his debts, nor can he dispose of them by will. He holds them in trust to pay the debts of the deceased, and then to discharge his legacies and, as in all other cases of trust, he is personally responsible for any breach of duty. And property thus held acquired from him by third parties with knowledge of his trust, and his disregard of its obligations, can be followed and recovered. The law exacts the most perfect good faith from all parties dealing with a trustee respecting the trust property. Whoever takes it for an object other than the general purposes of the trust, or such as may reasonably be supposed to be within its scope, must look to the authority of the trustee, or he will act at his peril. The adjudications in support of this doctrine are very numerous. The doctrine pervades the whole Law of Trusts, and cases cited; Smith *v.* Ayer, 101 U. S. R., p. 320, Oct., 1879. Opinion by Mr. Justice Field, all concurring.

"The substance of the third instruction prayed for was, that if the spirits were removed from the warehouse according to the forms of law and the claimants bought them without knowledge of the fraud, they were not liable to forfeiture. The Court charged in accordance with the prayer, with this

qualification that if Boydan bought the spirits as agent for Havington and was cognizant of the fraud, Havington would be bound by his knowledge. The claimants insist this is not law.

The question how far a purchaser is affected with notice of prior liens, trusts or frauds, by the knowledge of his agent who effects the purchase, is one that has been mooted in England and in this country. That he is bound and affected by such knowledge or notice as his agent obtained in negotiating the particular transaction is everywhere conceded. But Lord Hardwicke thought that the rule could not be extended so far as to affect the principal by knowledge of the agent acquired previously in a different transaction (Waviacik *v.* Same, 3 Atykins, 291). Supposing it to be clear that the agent still retained the knowledge so formally acquired, it was certainly making a very nice and thin distinction. Lord Eldon did not approve of it, in Mountford *v.* Scott, 1 Turner & Russell, 274, he says: "It may fail to be considered whether one transaction might not follow so close upon the other as to render it impossible to give a man credit for having forgotten it; I should be unwilling to go so far as to say that if an attorney has notice of a transaction in the morning he should be held in a Court of Equity to have forgotten it in the evening; it must in all cases depend upon circumstances." The distinction taken by Lord Hardwick has since been entirely overruled by the Court Exchequer, *Ch.*, in the case of Dresser *v.* Norwood, 17 Com. Beuch N. S., 466. So that in England the doctrine now seems to be established that if the agent, at the time of effecting the purchase has knowledge of any prior lien, trust or fraud, affecting the property, no matter when he acquired such knowledge, his principal is affected thereby. If he acquire the knowledge when he effects the purchase no question can arise to his having it at that time; if he acquired it previous to the purchase the presumption that he still retains it and has it present to his mind

will depend upon the lapse of time and other circumstances. Knowledge communicated to the principal he is bound to recollect, but he is not bound by knowledge communicated to his agent unless it is present to the agent's mind at the time of effecting the purchase. Clear and satisfactory proof that it was so present seems to be the only restriction required by the English rule as now understood. With the qualification that the agent is at liberty to communicate his knowledge to his principal, it appears to us to be a sound view of the subject. The general rule that a principal is bound by the knowledge of his agent is based on the principle of law that it is the agent's duty to communicate to his principal knowledge which he has respecting the subject matter of negotiation and the presumption that he will perform that duty.

This rule is sometimes stated so as to limit it to notice arising from or at the time connected with the subject matter of his agency. Such notice must have come to the agent it is said while he is concerned for the principal, and in the course of the very transaction, or so near before it that the agent must be presumed to recollect it. This limitation, however, applies more particularly to the case of an agent whose employment is short lived, so that the principal shall not be affected by knowledge that came to the agent before his employment began, nor after it was terminated. But when the agency is continuous and concerned with a business made up of a long series of transactions of a like nature, same general character, it will be held that knowledge acquired as agent in that business in any one or more of the transactions, making up from time to time the whole business of the principal, is notice to the agent and to the principal which will affect the latter in any other of those transactions in which that agent is engaged, if that knowledge is material.

Holden *v.* The N. Y. & E. Bank *et al.*, 72 N. Y., p. 293 (1878). Opinion by Folger, *J.*

1. Notice. Office. Individual.

A person will be held to have notice as an individual of what he does as president of a corporation.

"The case as made by the pleadings may be briefly stated. The president of a corporation induced a subscription for shares on the terms, namely, and had placed in his hands the shares of stock accordingly. In order to negotiate the note and enable the corporation to realize thereon, he became the last endorser. The last holder obtained judgment, of which the plaintiff had part, still holding the shares of stock under the circumstances stated. What are his legal rights against the maker of the note? What he knew as president of the company he knew privately. He knew consequently that the note was to be renewed, and that the obligation of the maker was to cease on notice given, and the shares of stock in his hands to be forfeited, whereby the maker of the note (the defendant) was to lose the $3,000 in cash paid by him, and all interest in the shares of stock. The relationship of the plaintiff to defendant in this transaction is not so clearly stated as might be desirable; yet enough is disclosed to show that if what is averred in the answer be true there can be no recovery. * * * If the plaintiff acted in this matter at the outcome, for said corporation, it may or it may not be that he has a cause of action against said corporation. He cannot, however, *sever* his knowledge as president from his private knowledge of what he did as president. He knew the equities and is chargeable therewith; wherefore the motion for judgment must be overruled.

Treat, Dist. Judge, Eastern Dist. of Mo., January, 1881, Lancaster *v.* Collins, 2 McCrary, pp. 355 and 356; affirmed, 115 U. S., 222, Oct. 1885.

All concur. Municipal bonds. *Bona fide* purchase. Knowledge of attorney as to the invalidity.

"M. and her agent having acquired certain town bonds, with knowledge of facts which made them invalid placed them in the hands of her attorney, MacV., who sold them to C. It appeared that at the time of the purchase by C., MacV. was his legal adviser, and was one of the attorneys retained by him in the prosecution of the suit on the bonds against the town.

Held that C. was not a *bona fide* purchaser of said bonds, and could not recover.

Carter *v.* Town of Ottawa.
Circuit Court, N. D. Illinois, July 22d, 1885, Fed. Rep., Vol. 24, p. 546.

"Windett was bound to know, when he purchased, the inconclusive character of the decree *pro confesso* on which he now relies, and that it was not in the power of himself and Lucy Flaglor to defeat the right which the law gave to the absent defendant, and render it of no avail by this transfer of title. In addition to this, it is impossible, in any light, to regard Windett as an innocent purchaser, since he was the attorney and counsellor in that suit of Elizabeth Flaglor during her lifetime, and of Lucy Flaglor afterwards, and so remains to the present hour. It is also in evidence that he was well aware of the existence of the mortgage and its possession by Catharine, and at one time had promised that it should be paid.

Gay *v.* Porpart, Oct., 1882.
United States Reports, Vol. 106, p. 697.

The important controlling question is whether, under the facts stated in the bill, a case of equitable cognizance can be presented when these facts are properly pleaded.

The decree of the chancellor must be reversed, the motion to dismiss the bill for want of equity overruled and the cause remanded.

II.

The following facts are extrinsic to the cause of action, and sufficicent to have the Court in this collateral action revoke and set aside the judgment set up in bar by defendants here in error.

See the facts set out in the transcript of record, pp. 27 and 28, fols. 51 and 52.

I take the general rule to be clearly settled by the Duchess of Kingston's case, that when the matter adjudicated is by a Court of peculiar and exclusive jurisdiction and the same matter comes incidentally before another Court, the sentence in the former is conclusive upon the latter as to the matter directly decided, not only as between the same parties but as against strangers, unless it can be impeached on the ground of fraud or collusion. The principle recognized 11th S. and R., page 422. *Collusion* being a matter *extrinsic* of the cause may be gone into by a stranger and tried by a jury. It may be inquired if there was collusion between the administrator and the first purchaser.

Frederick S. Winston as Trustee, guilty of fraud of which the Court can inquire in this action, in that he did not defend the bondholders, but colluded with the parties plaintiff to the action set up in bar.

See 1st Wood's Reports, page 368.

BRADLEY, *J.*, p. 379: "Where complainants are allowed to dispense with the parties on account of their numerousness, any one of whom would have a right to come in by petition and be made a party if necessary to protect their interest, they ought to proceed with the utmost fairness and good faith, and not resort to anything like sharp practice in the proceeding which is to be binding upon all. Any deviation from this requirement would be a proper ground to be considered on the question of opening or setting aside the decree at the instance of such omitted party.

The Court would not tolerate any conduct of the complainant calculated to lull such parties into security and induce them to remit any degree of watchfulness in regard to their interest which they would otherwise have exerted. From this it is evident that so far as the trustees were concerned

they cannot claim that any fraud was practiced on them. They allowed the decree to be taken by default.

But this supineness in the matter was really a constructive fraud against the bondholders whom they represented, and if knowingly taking advantage of by the complainants in that suit to the prejudice of the bondholders, they are participants in the fraud.

The case set forth in the bill, being one showing that no real defense was made in the suit in the State Court of Missouri set up in bar, because of the unfaithful conduct of the trustee representing the bondholders, and the attorney for the plaintiffs in said action, is one of which a Court of Equity will take cognizance.

Pacific R. R. of Mo. *v.* Mo. P. R. R., 111 U. S. R., p. 505.

"The frauds for which Courts of Equity will interfere to set aside or stay the enforcement of a judgment of a court having jurisdiction of the subject matter and the parties, must consist of extrinsic collateral acts, not involved in the consideration of the merits. They must be acts by which the successful party has prevented his adversary from presenting the merits of his case, or by which the jurisdiction of the Court has been imposed on."

United States *v.* Flint. (1876). Dist. Cal. Op. by Mr. Justice FIELD, 4 Sawyer, U. S. Cir. Court, p. 51. Affirmed, 98 U. S., p. 68.

These views are in consonance with the adjudged cases. We have looked in vain through all those cited by the learned associate counsel in the Throckmorton case for anything infringing upon them. In the Duchess of Kingston's case, the sentence of the Spiritual Court was held to be fraudulent and void, because obtained by collusion of the parties. And in giving the opinion of the judges to the House of Lords, Chief Justice De Gray observed that, although a judgment was conclusive evidence upon the point involved and could not be impeach-

ed from within, yet, like all other acts of the highest judicial authority could be impeached from without, and that fraud was an extrinsic collateral act which violated the most solemn proceedings of Courts of Justice.

U. S. *v.* Flint, 4 Sawyer, 53. Op. Mr. Justice FIELD, Cir. Ct. Dist. Cal., Sept. 1876. Affirmed, 98 U. S., 68.

"We think these decisions establish the doctrine on which we decide the present case; namely, that the acts for which a Court of Equity will on account of fraud set aside or annul a judgment or decree rendered between the same parties by a court of competent jurisdiction, have relation to frauds, extrinsic or collateral, to the matter tried by the first Court and not to a fraud in the matter on which the decree was rendered."

U. S. *v.* Throckmorton, 98 U. S., p. 68. MILLER, *J.* All concur. All cases cited.

See Wierich *v.* De Zoyd, 7 Ill. R., 385. Cases cited by Mr. Justice MILLER, in 98 U. S., 68.

Pearce *v.* Olney, 20 Conn., 553 and 554.

Kent *v.* Ricards, 3 Maryland Ch. Dec., 395–396–397.

State of Ia. *v.* Gorley & Clored, 2 Ia., 54–59.

Wells' Ris. Adjudicated, Sec. 499, pp. 428–429–430, and cases in foot notes.

Smith *et al.* *v.* Lowery, 1 Johns. Ch., 321–324. Kent, Chan., opinion.

III.

Service of a summons and complaint or other process of the Court upon Frederick S. Winston in

his individual capacity as one of the bondholders and his subsequent individual appearance and individual answer in the judgment set up in bar herein to plaintiff's cause of action is not good in law or equity, it not being equivalent to the service upon Frederick S. Winston as trustee, or Winston's appearance and answering as trustee in the eye of the law or equity not healing the defect, for the reason that the beneficiaries of the trust fail to have appeared in person in fact, or to have been represented by their trustee on the record in the court (p. 27, f. 50, 51, 52; p. 39, fol. 70).

But to bind the estate of a bankrupt in the hands of his assignee by an adverse judicial proceeding or by a judgment of foreclosure in a suit commenced after the bankruptcy, it is, we think, indispensable that the suit or proceeding should have brought against the assignee distinctively in his representative and official or, at least, that it should in some way appear on the face of the proceeding that they related to or affected the bankrupt's estate, and that it is not sufficient that the assignee is individually named in the process or pleading, without any averment of his representative character. This is, we think, in accordance with the general tenor of adjudication. (Rathborne *v.* Hooney, 50 N. Y., 465; Trustee *v.* Hubbell, 65 Barb., 74; Merritt *v.* Seman, 6 N. Y., 171; Van Cott *v.* Prentice, 104 id., 45; Colt *v.* Colt., 111 U. S., 566.)

Gillett *v.* Rec'r, etc., *v.* The Fairchild, 4 Den., 80. The papers served on Waddell gave him no notice that the suit related to the property of the bankrupt. The statement made in the complaint was, in fact, misleading, since it alleged that his title or interest, whatever it was, accrued under Scudder prior to Dec. 1, 1838, and consequently before the passage of the Bankrupt Act. Whether Waddell, in fact,

knew that the foreclosure related to land owned by Williams does not appear. The fact, however, is immaterial. The decisive point is that the equity of redemption was not brought in, and that the representative interest of Waddell was not involved in a suit in which he was named simply as an individual. It would, we think, be an unwise rule and one not authorized by adjudged cases to permit beneficial interest in trust of this character to be affected by such loose proceedings as were taken in this case. These views lead to a reversal of the judgment. " . * * Judgment should be reversed and new trial ordered. All concur. Jany., 1889."

Landon *et al. v.* Mary N. Townshend, 112 N. Y., pp. 99 and 100.

See also Colt *v.* Colt, 111 U. S., 577–584.

IV.

Motion for Judgment.

(*a*) Motion to dismiss bill for want of equity.

Leals *v.* Robinson & Co., Supreme Court of Alabama, 1883, 85 Alabama Repts., pp. 368 and 369—BICKEN, *C. J.:* "A motion to dismiss for want of equity is not the equivalent of a demurrer; nor is it appropriate to reach mere defects for insufficiencies, curable by amendment, which is matter of right at any time before the final decree, it should be entertained only when admitting the facts apparent on the face of the bill, whether well or illy pleaded, the complainant is without right to equitable relief. When it is apparent that if the facts were well pleaded, a case for relief would exist, the defendant should be put to demurrer specifying

grounds of objection, affording the complainant the opportunity of removing them by amendment.

Hooper *v.* T. & M. R. R. Co., 69 Ala. Repts., p. 529.

Hooper *v.* T. & M. R. R. Co. (1881), 69 Ala. Repts., p. 533—Opin., BRICKELL, *Ch.:* The hearing in the Court of Chancery was had on motion to dismiss the bill for want of equity, no demurrer or answer having been filed. Chancellor was of the opinion that the bill could not be regarded * * * that it was a bill * * * stating no fact rendering necessary the interference of a Court of Equity and could not be entertained. Therefore the motion was sustained and the bill dismissed. It is not an uncommon error to suppose that, under principles and rules governing our Courts of Chancery, a motion to dismiss a bill for want of equity and a demurrer are equivalents; that any and every objection which would be available on demurrer is equally available on the ground of a motion to dismiss. A motion to dismiss has its authority in the 76th Rule of Chancery Practice, which reads: "The defendants may, at any stage of the cause, move to dismiss a bill for want of equity unless a similar motion has been previously made and determined. If the cause is ready for hearing on bill and answer or pleadings and proof, such motion may be made and heard in connection with the final hearing." Like the general demurrer which was usual in our practice prior to the Code, a motion to dismiss a bill for want of equity directs attention wholly and exclusively to the equities of the bill, not to its frame or its want or misjoinder of parties or other matter, which, if a demurrer was interposed, would be regarded as waived if not specially assigned. The present bill may be open to criticism, there may be defects in its frame and omissions of proper averments adapting it to the particular belief to which the complainants may be entitled. These defects, if made the cause of

demurrer, are curable by amendment but do not form proper matter of a motion. To dismiss for want of equity. That motion should prevail only when admitting all the facts apparent on the face of the bill, whether well or illy pleaded, the complainant can have no relief whatever. If it is apparent upon a proper statement of the facts and an appropriate prayer, equitable relief may be obtained, the motion should be overruled, the respondent be put to his demurrer or leave granted to the complainant to amend, obviating the defects in the bill. Such is the course of practice in Tennessee, under a statute similar in terms to our rule of practice.

Thompson *v.* Paul, 8 Humphrey, 114.
Quin *v.* Leak, 1 Tenn. Ch., 67.
Randel *v.* Payne, Alabama, 137.

V.

It is respectfully submitted for all the facts and on all the authorities and principles herein set forth, that the judgment of the Circuit Court of the United States for the Eastern District of Missouri herein should be overruled and judgment be entered herein in favor of the plaintiff in error, and the case be remanded to the Circuit Court of the United States, Eastern District of Missouri, for trial with costs and disbursements.

HENRY H. DENNISON,
Solicitor for Plaintiff in error.
A. G. VANDERPOEL,
Counsel for Plaintiff in error.

Supreme Court, U. S.
FILED.
JAN 9 1890
JAMES H. McKENNEY
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

S. GRANVILLE BEALS,
Appellant,
vs.
ILLINOIS, MISSOURI & TEXAS RAILWAY COMPANY, CAPE GIRARDEAU SOUTHWESTERN RAILWAY COMPANY, ET AL.,
Respondents.
No. 111.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN JUDICIAL DISTRICT OF MISSOURI.

STATEMENT AND BRIEF FOR THE RESPONDENTS THE CAPE GIRARDEAU SOUTHWESTERN RAILWAY COMPANY AND THE CAPE GIRARDEAU & STATE LINE RAILROAD.

GEO. D. REYNOLDS,
Solicitor and Counsel for said Respondents.

Nixon-Jones Printing Co., 209-212 Pine St., St. Louis.

IN THE

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S. GRANVILLE BEALS,
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vs.
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Respondents.
} *No. 111.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN JUDICIAL DISTRICT OF MISSOURI.

STATEMENT.

This is a suit in equity brought by appellant, who claims to be the owner of sixty-eight bonds and attached coupons, a portion of fifteen hundred bonds of $1,000 each, issued by the Illinois, Missouri and Texas Railway Company and alleged to be secured by a deed of trust charged to have been made by the Illinois, Missouri and Texas Railway Com-

pany, the Cape Girardeau and State Line Railroad, George C. Thilenius and Henry T. Blow, Trustees, to Frederick S. Winston and David Hoadly, as Trustees. The deed of trust bears date May 2nd, 1871, and purports to convey to Winston and Hoadly, as trustees, a railroad with its rights, powers and franchises known as the Cape Girardeau and State Line Railroad. It is recited in the amended bill and in the deed of trust that the deed of trust was given on the property of the Cape Girardeau and State Line Railroad to secure bonds issued by the Illinois, Missouri and Texas Railway Company by virtue of an alleged contract made in 1871, between the Cape Girardeau and State Line Railroad and Thomas C. Fletcher, by which the last named road conveyed its property to Blow and Thilenius as Trustees, on the trust that they were to convey to Fletcher, or to a railroad company to be organized by him for the purpose of completing the construction and equipment of the road, and operating it when completed, and it is also alleged that it was in execution of this contract that the Cape Girardeau and State Line Railroad and Thilenius and Blow as trustees joined the Illinois, Missouri and Texas Railway Company in the execution of the deed of trust. It is nowhere averred, either in the bill or the deed of trust, that the roadway, rights and privileges of the Cape Girardeau and State Line Railroad were ever in point of fact conveyed by deed or other instrument to the Illinois, Missouri and Texas Railway Company.

The appellant in his bill alleges that he is the owner of sixty-eight of the bonds and attached coupons, and he avers "on information and belief" (see page 25, Transcript), that the sixty-eight bonds, which he claims to own, constitute a majority of the outstanding bonds of said Illinois, Missouri and Texas Railway Company.

It is further averred in the bill that Winston and Hoadly, the trustees named in the bill, are both dead, the latter having died a short time after the execution of the deed of trust, and Winston having died in March, 1885.

It is further averred that one of the respondents, the Cape Girardeau Southwestern Railway Company, "has been in the sole use, occupation, control and enjoyment of said property vested in said trustees, Winston and Hoadly, by virtue of said deed of trust, for several years last past, and said Cape Girardeau Southwestern Railway Company claims a right to said property and franchises by purchase or otherwise prior to the lien of your orator, by virtue of the bonds heretofore mentioned and the subject of this suit." (See Transcript, p. 26.)

It is further charged in the bill (see Transcript, p. 27, and following), "on information and belief that a systematic, fraudulent and continuous effort has been made, and is still being made by these defendants, or some of them, to prevent either the collection of the interest or principal of said bonds, * * * and that the property named in said trust deed to said Winston and Hoadly, and included in said bonds, has been managed, disposed of and controlled by these defendants or some of them in such a mysterious and obscure way, as to require the equitable interposition of this honorable court to enable your orator to obtained his just rights in the premises," and the bill as amended then goes on to charge, still "on information and belief," that the judgment set up in bar in defendants' plea to the original bill was obtained by said defendants in fraud against the bond holders in that substituted service was made on Frederick S. Winston, only surviving trustee, as Frederick S. Winston in person and not as trustee, and that Frederick S. Winston appeared in said action in person only and not as trustee for said bond holders, and then by fraudulent agreement with the plaintiffs in said action allowed judgment of the court to be entered by default; that Winston as trustee made no defense when he had personal knowledge that the bonds were legally and properly issued;" * * * "that said Frederick S. Winston had personal knowledge of the fact that Houck, the present President of the Cape Girardeau Southwestern Rail-

way Company, the defendant herein, was the sole attorney for plaintiffs in the action which entered into the judgment set up in bar herein, and the said attorney had knowledge of all the facts herein set forth, and that he, Frederick S. Winston, was violating his duty as trustee towards the bond holders, whose rights it was his duty to protect, and that said Houck had personal knowledge that said judgment was obtained by collusion with the various parties and attorneys appearing in said suit and between him and this Frederick S. Winston, as trustee;" and "that the said Houck took advantage, as attorney for plaintiffs in said action, of all the neglect of said trustee, in his duties as trustee, in allowing judgment to be taken on a false and fictitious state of facts, known to him in his official capacity to be false and fictitious." This substantially is all the charge in the bill, as amended, of any collusion or of any fraud in obtaining the judgment. The bill then goes on to pray for a discovery and for general relief and prays that the Court will adjudge and decree, first, that the deed of trust to Winston and Hoadly is a good and valid deed of trust vesting the property in them, and has always been from the execution thereof a lien on said property. The second, third, fourth, fifth and sixth prayers are for appointment of a Receiver and injunction against defendants and for payment of the interest and principal of the debt. The seventh prayer asks for an answer from each of defendants "*under oath*," as fully as if they had been specifically and particularly interrogated as to the matters charged in the bill. The bill then closes with prayer for an injunction and for subpœna.

To this amended bill the defendants, Fletcher and Thilenius demurred. The demurrers were however afterwards withdrawn. The defendant, Henry T. Blow, was never served; in point of fact he has been dead for many years. The Illinois, Missouri and Texas Railway Company filed a plea (see Transcript, page 67), setting up cancellation of the deed of trust sued on, by decree of the Circuit

Court of Cape Girardeau County, Missouri, and alleging that after the rendition of said decree in 1878, it had exercised no acts of ownership or control over the property, having in 1873 or 1874 exhausted its means and ceased operations.

The Cape Girardeau Southwestern Railway Company and the Cape Girardeau and State Line Railroad filed separate pleas and answers.

The attention of the Court is respectfully called to the pleas of the Cape Girardeau Southwestern Railway Company (Transcript, pages 34 to 52,) in which the facts of the case are fully set out on these respondents' side. Each of these pleas is fortified by answers denying all fraud and combination and the facts on which the charge is founded and the above pleas and answers are duly verified.

Briefly stated, the following facts appear in the pleas of the two railroad companies respondent. The Cape Girardeau and State Line Railroad, the owner of a franchise to construct a railroad from Cape Girardeau to the Missouri and Arkansas State lines, a distance of some 85 miles, had commenced the construction of its road; not having means to finish and equip it, its directors entered into contract with Thomas C. Fletcher to organize a company which would build it, agreeing to convey, and in fact conveying to Blow and Thilenius all of its road and rights in trust to convey to Fletcher or a company he should organize; both the road and the trustees to join in a deed of trust to secure the bonds which should be sold to raise money to equip and operate the road. The deed of trust was made in May, 1871, Hoadly and Winston being trustees. The new company, the Illinois, Missouri and Texas, undertook to finish the road, but failed and suspended operations in 1873 or 1874. In 1876 the Cape Girardeau and State Line Railroad commenced a suit in the Circuit Court of Cape Girardeau County, Missouri, in which county the road was located and had its chief office, to cancel the above deed of trust. In this suit it was

charged that the agreements between Fletcher and the Cape Girardeau and State Line Railroad were void and unauthorized by the stockholders, and never subsequently ratified by them. That the seal of the latter company was fraudulently affixed to the deed of trust referred to, on May 2d, 1871; that at that date the legal title to the road was in Blow and Thilenius; that neither of them affixed their seals to the deed of trust; (the deed of trust as set out by appellant, page 14, Transcript, establishes this fact); that in December, 1871, seven months after the pretended execution of the deed of trust, but before it was placed on record, Blow and Thilenius reconveyed all the property to the Cape Girardeau and State Line railroad; that on the 14th of December, 1871, the contract between the latter company and Fletcher was rescinded by mutual consent; that no bonds had been issued up to that date; that neither Fletcher nor the Illinois, Missouri and Texas Railway Company ever did any work towards building the road; that all the work of construction of the road that ever was done was by the Cape Girardeau and State Line Railroad; that after the reconveyance by Blow and Thilenius and the surrender of the contract by Fletcher bonds were fraudulently issued and put on the market. In this suit the Illinois, Missouri and Texas Railway Company and Winston, who was then the sole surviving trustee, were made defendants, along with numerous other parties alleged to be holders of the bonds. The railroad company and Winston and the other parties were all summoned, appeared to the cause and answered. The cause was heard and on January 25th, 1878, the Court rendered a decision finding all the facts stated by plaintiff in its petition in the cause to be true, and it cancelled and annulled the deed of trust as a lien upon the property, which it is averred is the same deed of trust now sought to be enforced by this appellant. Both the Cape Girardeau and State Line Railroad and the Cape Girardeau South-

western Railway Company plead the above facts in bar of this present suit. The Cape Girardeau Southwestern Railway Company as a further plea sets up, that in August, 1880, the Cape Girardeau and State Line Railroad sold all its right to the property in controversy to Louis Houck; that Houck organized the Cape Girardeau Southwestern Railway Company and conveyed to it for $150,000, paid him by said road, all the rights to the property in dispute; that thereupon the last named road entered upon the construction of a railroad from the city of Cape Girardeau in a southwesterly direction, had built and equipped over 75 miles of it at the time this suit was commenced, made bridges, erected depots and station houses, equipped the road with rolling stock and was operating it; and that to do all this it had spent large sums of its own money and borrowed large amounts on deeds of trust given on the property, which are all set out in the plea; that when it took possession of the roadway there was nothing to it except its right to some lands at the crossing of another railroad, some detached rights of way and a lot of rusted and worthless rails. The ties were rotten, the culverts and embankments had crumbled and wasted away, timbers of bridges that had been partially constructed were rotten and worthless, and that it had taken the road in this condition, and by its own means, in perfect good faith and without any knowledge or notice whatever of any claim of the appellant, or any one else to any lien upon the property, and without any knowledge or information whatever as to any pretense that the alleged decree of the Cape Girardeau Circuit Court had not been fairly obtained, it had gone on and done all this work and borrowed money upon it.

The appellant filed the general replication and thereupon respondents moved for judgment for the reason that plaintiff had not taken issue on the pleas. On this state of pleadings the case came on to be heard, was argued by counsel and submitted to the Court, as shown by the record in this

case (Transcript, page 70). It was heard upon the bill, pleas, answers and replication and the Court found the equities for respondent and decreed as follows: "That complainants' bill of complaint be and it is dismissed with costs."

From this appeal has been taken.

ADDENDA TO BRIEF.

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For Kenison, assignee, read Kerrison, assignee.

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See also under Point I the following cases:

McArthur vs. Scott, 113 U. S. at page 396.

Rand vs. Walker, 117 U. S. at page 344.

First Nat. Bank vs. Shedd, 121 U. S. at page 84

Richter vs. Jerome, 123 U. S. at page 246.

Vetterlein vs. Barnes, 124 U. S. at page 172.

All these approve Kerrison, assignee v. Stewart

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Point VII b.

The appellant has no right to bring this suit alone. The other bond holders are necessary parties.

Railroad Co. vs. Orr, 18 Wall. 471.

BRIEF.

I.

The trustee, Frederick S. Winston, was a party to the suit in the Cape Girardeau Circuit Court. He, as trustee, was by the deed of trust invested with such powers and subjected to such obligations that his beneficiaries are bound by what is done against him or by him; the beneficiaries were not necessary parties to the suit against him to defeat the trust. He was in court on their behalf, and the appellant, as one of the beneficiaries, though not a party to the suit, is concluded in the decree, unless it is impeached for fraud or collusion between the trustee and the adverse party.

Kenison, Assignee, *v.* Stewart et al., 93 U. S. 155;
Corcoran *v.* Chesapeake Canal Co., 94 U. S. 741;
Shaw *v.* Railroad Co., 100 U. S. 605.

The appellant was also represented in the suit as being a bond holder of the Illinois, Missouri & Texas Railway Co., which was a party to it.

Railway Co. *v.* Allen, 99 U.S. 463.

II.

The decree of the Circuit Court of Cape Girardeau county, is a decree by a court of general jurisdiction, a court of general common law and equity jurisdiction, rendered in

a cause in which it had jurisdiction over the subject matter — the cancellation of a deed of trust on lands the greater part of which were in that county; in which it had jurisdiction over the parties, for they were duly summoned, appeared and answered, and it is conclusive and binding, unless impeached for fraud.

See among other cases:

Cromwell *v.* County of Sac, 94 U. S. 351;
Steret *v.* Lye, 103 U. S. 66.

III.

The allegations of fraud in the bill as against the decree are totally insufficient to impeach it. No averments connect the Cape Girardeau Southwestern Railway Company with the alleged frauds, nor is it charged that it knew of them, even indirectly.

IV.

But even if the allegations were sufficient, the pleas and answers denied them — the denials are under oath — which the bill called for; no witnesses supported the averments of the bill as to fraud, even the appellant only charged it on information and belief; requiring respondents to answer under oath, they did so, denying the fraud, and the court sustaining the denials found the answers and pleas true. The rule that a decree cannot be pronounced fraudulent on the testimony of a single witness, unaccompanied by corroborating circumstances, against a positive denial by answer, applies to an answer in support of a plea.

Hughes *v.* Blake, 6 Wheat. 453.

V.

The pleas were good and sufficient in form and in fact.

1 Daniel's Chy. Pr., chap. 15, § 1; *Ibid.*, pages 610, 661;
Milligan *v.* Milligan, 3 Cranch, 220;
Hughes *v.* Blake, 6 Wheat. 453;
The State of Rhode Island *v.* The State of Massachusetts, 14 Peters, 210.

In truth they were drawn up with the last named case before the pleader — and in conformity with the opinion of the majority of the Court in that case.

VI.

The appellant having replied to the plea, admitted its sufficiency in form, and if the plea is found true in fact, the bill must be dismissed.

Hughes *v.* Blake, *supra*.
1 Daniel's Chy. Pr., p. 661.

VII.

The legal title to the property was in Thilenuis & Blow — their deed is not under seal and conveyed no title.

Harley *v.* Ramsey, 49 Mo. 309.